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NO. 68998-3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE THE PERSONAL RESTRAINT OF:

Alan Meirhofer

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STATE OF WASHINGTON
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PERSONAL RESTRAINT PETITION

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PETITIONER MAY FILE PETITION
WITHOUT PAYMENT OF FILING FEE

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A. STATUS OF PETITIONER

Petitioner Alan Meirhofer is currently confined in the Special Commitment Center on McNeil Island. He was committed on May 22, 2000 following a jury trial under RCW ch. 71.09, the "sexually violent predator" (SVP) statute, after the State's experts reported he suffered from pedophilia and was 52-92% likely to reoffend. Appendix A at 10-12; Appendix B at 1.

In 2010 and 2011, the State's psychologist evaluated him pursuant to the annual review process mandated in RCW 71.09.070 and RCW 71.09.090. The State's expert concluded that there was no longer sufficient evidence that Mr. Meirhofer had pedophilia and that according to the actuarial risk assessment tools, Mr. Meirhofer's risk of reoffense had plummeted to well below 50%. Mr. Meirhofer was nevertheless denied an evidentiary hearing on whether he continued to meet the statutory and constitutional standards for involuntary commitment. The order denying a new trial was entered in Whatcom County Superior Court on October 10, 2011. Appendix I.

Given the new evidence that Mr. Meirhofer no longer has a mental illness that makes him more likely than not to reoffend, Mr. Meirhofer's continued confinement is unconstitutional. Mr.

Meirhofer asks this Court to grant relief in the form of a trial on whether he continues to meet the definition of an SVP.

B. GROUNDS FOR RELIEF AND ARGUMENT

1. Statement of Relevant Facts.

Based on two events that occurred in 1986 and 1987, Alan Meirhofer pleaded guilty to one count of burglary, one count of assault, one count of rape, and one count of kidnapping. In re Meirhofer, 2001 WL 1643535 at *1 (unpublished; citing for facts). After Mr. Meirhofer served a nine-year prison sentence for the crimes, the State petitioned for his commitment as a "sexually violent predator" under RCW ch. 71.09. Id. at *2.

The State hired two psychology experts to evaluate Mr. Meirhofer, both of whom diagnosed him with pedophilia. Appendix A at 10, 12. The experts assessed Mr. Meirhofer's risk using several actuarial tools. One tool assessed Mr. Meirhofer as being 92% likely to reoffend within six years. Appendix A at 11. Another assessed him as being 54% likely to reoffend within 10 years. Appendix A at 12. A third tool assessed Mr. Meirhofer as being 52% likely to reoffend within 15 years. Appendix A at 11.

At trial, the jury credited the findings of the State's experts and Mr. Meirhofer was committed on May 22, 2000. Appendix B at

1. In subsequent annual reviews, the State's experts concluded he continued to have pedophilia and continued to have a high risk of reoffense. Appendix B at 20.

In his 2010 annual review, however, the State's expert did not diagnose Mr. Meirhofer with pedophilia. Recognizing that Mr. Meirhofer had been diagnosed with pedophilia in the past, the expert in 2010 said, "I do not think there is sufficient evidence to warrant a pedophilia diagnosis." Appendix B at 12. The expert instead diagnosed Mr. Meirhofer with "hebephilia". Appendix B at 12.[1]

As for likelihood of reoffense, the State's expert assessed Mr. Meirhofer's risk using an actuarial tool and concluded that his statistical likelihood of reoffense had dropped significantly since his original commitment. The expert concluded Mr. Meirhofer was now only 20% likely to reoffend within five years and 30% likely to reoffend within 10 years. Appendix B at 13.

Nevertheless, based on the facts underlying Mr. Meirhofer's 1986 and 1987 offenses and the fact that he did not participate in

[1] Like the State's experts in the original commitment trial, the expert in 2010 also concluded Mr. Meirhofer has personality disorder not otherwise specified with antisocial traits. Appendix A at 10, 12; Appendix B at 11.

treatment, the psychologist opined Mr. Meirhofer still "meets the definition of a sexually violent predator." Appendix B at 13-14.

Mr. Meirhofer moved for an evidentiary hearing. Appendix C. He noted that a new trial was required because even the State's expert found his actuarial risk assessment was now well below 50%, and Mr. Meirhofer's own expert agreed. In fact, one actuarial assessment showed Mr. Meirhofer had only an 8% risk of reoffending within five years. Appendix C at 3, 13; Appendix D at 20-28. Mr. Meirhofer's expert also concluded he did not have pedophilia, and diagnosed him only with alcohol and amphetamine dependence (remission in controlled environment) and personality disorder not otherwise specified with antisocial traits. Appendix C at 3; Appendix D at 20. The expert also cited numerous authorities demonstrating that the State's new hebephilia diagnosis was of questionable validity. Appendix C at 17; Appendix D at 17-20.

The trial court found that under the pre-2005 version of RCW 71.09.090 and the Supreme Court's original decision in In re McCuistion, 160 Wn.2d 633, 238 P.3d 1147 (2010), Mr. Meirhofer had presented sufficient evidence that he no longer met the definition of a sexually violent predator such that a new trial was required. Appendix E at 2. The court concluded, however, that if

the Supreme Court endorsed the 2005 amendments after reconsidering McCuistion, a new trial should be denied. Appendix E at 2. Under the 2005 amendments, a detainee cannot obtain a release trial even where there is evidence he is no longer mentally ill or dangerous, unless such change occurred either through sex-offender treatment or through debilitating physical injury. RCW 71.09.090(4)(b). The court stayed the case pending the Supreme Court's reconsideration of McCuistion. Appendix F.

While the 2010 annual review process was stayed, the State again evaluated Mr. Meirhofer in April 2011, and again diagnosed him with hebephilia but not pedophilia. Appendix G at 10. The State's expert again found that the actuarial risk assessment tool placed Mr. Meirhofer at a 20% likelihood of reoffense within 5 years and a 30% likelihood of reoffense within 10 years. Appendix G at 12. The State's expert nevertheless opined Mr. Meirhofer continued to meet the definition of sexually violent predator. Appendix G at 14.

The court denied an expert for Mr. Meirhofer in 2011, reasoning he had just had an expert evaluation six months earlier following the State's 2010 annual review. Because Mr. Meirhofer's last expert evaluation was so recent, it would still be valid, and it

would not make sense to have another evaluation while McCuistion was still pending. Appendix H at 37, 46.

By this time the Supreme Court had withdrawn the original McCuistion opinion, and the trial court denied Mr. Meirhofer's motion for an evidentiary hearing based on the 2005 amendments to RCW 71.09.090. Appendix I.

On May 3, 2012, the Supreme Court issued a new opinion in McCuistion and upheld the 2005 amendments to the statute. In re McCuistion, ___ Wn.2d ___, 275 P.3d 1092 (2012). The Court indicated that the amendments were constitutional because a detainee who had evidence the State was continuing to confine him in the absence of the constitutional requirements of mental illness and dangerousness could file a PRP even if he could not obtain relief through the annual review process. Id. at 1101 n.6. Mr. Meirhofer has therefore filed the instant PRP and moved to consolidate it with the motion for discretionary review of the order denying an evidentiary hearing following his annual review.

2. Other remedies are inadequate.

In light of the Supreme Court's holding in McCuistion, supra, a detainee who no longer meets the constitutional requirements for involuntary confinement but who has not achieved that change

through treatment or physical injury must file a PRP rather than seek relief through RCW 71.09.090. See McCuistion, 275 P.3d at 1101 n.6. Thus, this PRP is the appropriate avenue for relief.

3. Mr. Meirhofer must be granted a release trial because new evidence shows his confinement no longer satisfies the constitutional requirements of mental illness and dangerousness.

This Court will grant relief to an individual who has filed a personal restraint petition if the petitioner is under "restraint" and the restraint is unlawful. RAP 16.4(a). A petitioner is under restraint if, like Mr. Meirhofer, he is "confined". RAP 16.4(b). The restraint is unlawful if, inter alia:

> (2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or
>
> (3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government ...

RAP 16.4(c). Relief will be granted under RAP 16.4(c)(2) if the petitioner is actually and substantially prejudiced by the constitutional violation. In re Personal Restraint of Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). Relief will be granted under RAP

16.4(c)(3) if the new evidence (1) will probably change the result of the trial, (2) was discovered since trial, (3) could not have been discovered before trial by the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching. In re Personal Restraint of Lord, 123 Wn.2d 296, 319-20, 868 P.2d 835 (1994). The restraint here is unlawful under both subsections (2) and (3) of RAP 16.4(c) because new evidence shows the basis for Mr. Meirhofer's original commitment no longer exists and his continuing confinement is unconstitutional.

Even where an initial commitment is constitutional, the State violates due process when it continues to confine a person who is no longer both mentally ill and dangerous. U.S. Const. amend. XIV; Foucha v. Louisiana, 504 U.S. 71, 77, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) (reversing where individual was dangerous but no longer suffered from psychosis). Due process mandates that the State release a committed person "when the basis for holding him or her in the psychiatric facility disappears." State v. Sommerville, 86 Wn. App. 700, 710, 937 P.2d 1317 (1997) (reversing and remanding for conditional release due to insufficient evidence of mental illness, even though State's psychiatrist

reported defendant currently suffered from "impulse control disorder not otherwise specified, in partial remission").

As to subsection (3), material facts exist which have not previously been presented and heard, which undermine the constitutionality of Mr. Meirhofer's continued confinement. The trial court ruled it could not consider these material facts as part of the annual review process following the 2005 amendments to the statute. Accordingly, this PRP presents the first opportunity for a court to consider this new evidence – evidence which requires a jury trial on the propriety of Mr. Meirhofer's continuing commitment.

Both the State's expert and Mr. Meirhofer's expert concluded that there is no longer sufficient evidence that Mr. Meirhofer has pedophilia, which was the basis of his original commitment. The State's expert opined that he now suffers instead from "hebephilia." But Mr. Meirhofer presented evidence from the authoritative source – the editors of the DSM-IV-TR – explaining that hebephilia is not a mental disorder. Appendix J at 78-85. Hebephilia means "attraction to pubescent individuals" and is "far too widespread" to be a paraphilia. Appendix J at 80. Adults who rape teenagers are simply criminals; they are not mentally disordered. Appendix J at 80.

> It is fallacious to assert that having urges involving pubescent youngsters is sufficient for a diagnosis of a mental disorder. Having such urges is normal; acting on them is a serious crime, not a mental disorder.

Appendix J at 84. "Hebephilia is not a legitimate DSM-IV-TR mental disorder." Id. Its use in the correctional system "represents a misuse of the diagnostic system and of psychiatry." Id.

In Kansas v. Hendricks, 521 U.S. 346, 360, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997), Justice Kennedy warned, if "civil confinement were to become a mechanism for retribution or general deterrence, or if it were shown that mental abnormality is too imprecise a category to offer a solid basis for concluding that civil detention is justified, our precedents would not suffice to validate it." Id. at 373 (Kennedy, J., concurring). A majority of the Court in Crane agreed that "the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case." Kansas v. Crane, 534 U.S. 407, 413, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002). Not just any mental disease or defect is

sufficient to justify continued custody. State v. Klein, 156 Wn.2d 103, 119, 124 P.3d 644 (2005).

The commitment was upheld in Hendricks because the defendant suffered from pedophilia. But Mr. Meirhofer no longer suffers from pedophilia, and has instead been diagnosed with hebephilia – a mental abnormality that appears "too imprecise" to justify civil commitment. At a minimum, this change in diagnosis should trigger a full trial on the merits of Mr. Meirhofer's continued confinement. After all, no jury has ever found that Mr. Meirhofer has hebephilia, and the State's expert admits that there is no longer sufficient evidence supporting a diagnosis of pedophilia, which was the basis for the jury's original commitment of Mr. Meirhofer.

Perhaps more importantly, both the State's expert and Mr. Meirhofer's expert found that Mr. Meirhofer's likelihood of reoffense has plummeted according to the actuarial tools. The State's expert found that the actuarial risk assessment tool placed Mr. Meirhofer at a 20% likelihood of reoffense within 5 years and a 30% likelihood of reoffense within 10 years. Appendix G at 12. In contrast, at the time of Mr. Meirhofer's original commitment trial, he was assessed as being 52-92% likely to reoffend. Appendix A at 11-12.

A person is not a "sexually violent predator" unless he has a mental abnormality or personality disorder that makes him more likely than not to reoffend if not confined. RCW 71.09.020 (7), (18). In other words, there must be a greater than 50% likelihood of reoffense. In re Detention of Brooks, 145 Wn.2d 275, 295-96, 36 P.3d 1034 (2001), overruled on other grounds by In re Detention of Thorell, 149 Wn.2d 724, 72 P.3d 708 (2003). "The fact to be proved with respect to the SVP statute is expressed in terms of a statistical probability." Brooks, 145 Wn.2d at 296. The question is "not whether the defendant will reoffend, but whether the probability of the defendant's reoffending exceeds 50 percent." Id. at 298; see also In re Detention of Moore, 167 Wn.2d 113, 125-26, 216 P.3d 1015 (2009) (sufficient evidence of dangerousness where actuarial tools predicted 52-89% likelihood of reoffense, and even detainee's own expert agreed he was more likely than not to reoffend).

In making this determination, actuarial models "are more reliable than clinical judgment." Thorell, 149 Wn.2d at 757. The probative value of actuarial assessments is "high" and "directly relevant" to whether an individual meets the definition of "sexually violent predator". Id. at 758.

Under both the State's actuarial assessment and Mr. Meirhofer's actuarial assessment Mr. Meirhofer's statistical likelihood of reoffense is well below 50 percent. Appendix B at 13; Appendix C at 3, 13; Appendix D at 20-28; Appendix G at 12. Given this new evidence that Mr. Meirhofer does not have a mental abnormality that makes him more likely than not to reoffend, his continuing confinement is unconstitutional in the absence of a new trial. See Foucha, 504 U.S. at 77; Jones v. United States, 463 U.S. 354, 368, 103 S.Ct. 3043, 77 L.Ed.2d 3043 (1984); O'Connor v. Donaldson, 422 U.S. 563, 575, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975) ("even if [a detainee's] involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed"). The Supreme Court has directed that the appropriate avenue for relief in such circumstances is a PRP. McCuistion, 275 P.3d at 1101 n.6.

In sum, this Court should grant Mr. Meirhofer's PRP and remand for a trial on whether Mr. Meirhofer continues to meet the requirements for commitment under RCW ch. 71.09 and the Due Process Clause.

C. STATEMENT OF FINANCES

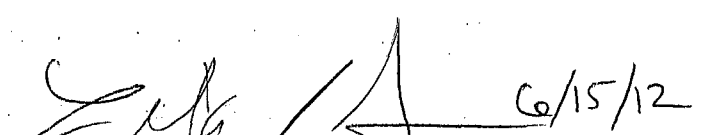
Mr. Meirhofer is indigent and requests waiver of the filing fee. The superior court's findings of indigency are attached as Appendix K. There has been no change in circumstances since the in forma pauperis declaration was filed.

D. REQUEST FOR RELIEF

For the reasons set forth above Mr. Meirhofer respectfully requests that this Court grant his personal restraint petition and remand for a trial on whether he continues to meet the statutory and constitutional standards for involuntary commitment. He further requests waiver of the filing fee.

E. OATH

After being first duly sworn, on oath, I depose and say: That I am the attorney for the petitioner, that I have prepared the petition, know its contents, and I believe the petition is true.



6/15/12

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//

APPENDIX A

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WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

In re the Detention of: ALAN MEIRHOFER, Respondent.	NO. 96 2 01119 0 PETITIONER'S TRIAL MEMORANDUM AND MOTIONS IN LIMINE

I. PROCEDURAL HISTORY

On June 7, 1996, the Petitioner, State of Washington, filed a petition alleging that Alan Meirhofer is a sexually violent predator as defined by RCW 71.09.020(1). On July 26, 1996, the Court found probable cause to believe Meirhofer is a sexually violent predator. The case is currently set for a trial by jury beginning May 10, 2000.

II. STATEMENT OF ANTICIPATED TRIAL TESTIMONY

The Petitioner plans to call approximately 11 witnesses in its case-in-chief. These witnesses include Meirhofer's past victims, police officers who investigated his offenses and were involved in his arrest, and experts in the evaluation and treatment of sex offenders and in signature crime analysis. The Petitioner also plans to use portions of the videotaped deposition of the Respondent.

Alan Lee Meirhofer was born on April 7, 1953. He has been convicted of four sexually violent offenses, as that term is defined in RCW 71.09.020(5).

On the afternoon of December 4, 1986, Meirhofer burglarized a residence in Seattle. Two women, Suzanne Holt and Megan McKiernan, and Megan's 13 year old son,

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Matt, lived in the residence. During the burglary, Meirhofer took Ms. Holt's keys to the home and a jewelry box belonging to Ms. McKiernan.

At approximately 2:30 a.m. on December 5, 1986, Ms. Holt was awakened by her answering machine which had been activated. She later discovered this was triggered when Meirhofer cut the home's phone line. Ms. Holt went to investigate. In the kitchen area, she saw Meirhofer attempting to enter the home through a glass door using the keys that he had stolen the previous afternoon. When Meirhofer saw Ms. Holt, he did not flee, but redoubled his efforts to get into the home.

Ms. Holt shouted a warning to her housemates and retreated to the upstairs bedroom where Ms. McKiernan was hiding with Matt. Meirhofer ran upstairs, where he tried to push his way into the bedroom. The two women attempted to hold the door shut. By this time, Meirhofer had put on a mask. In addition, he was armed with a knife. Meirhofer ordered the women to open the door. He told them he had a knife and that his partner downstairs was armed with a gun.

The women finally managed to shut the door. Since Meirhofer had cut the phone line to the home, the women sent Matt through the bedroom window to get help. When they told Meirhofer this, he left the home. The women called the police, who came and took a report of the burglary and assault.

Later that morning, at approximately 5:30 a.m., 13 year old Julia Hanson was raped in her home located at 9035 Evanston Avenue in Seattle. This residence is located approximately 1.25 miles from the Holt/McKiernan home.

Julia's assailant entered her home approximately five minutes after her mother had left for work. When Julia saw him, she pretended she was asleep. The intruder was wearing a mask made out of what appeared to be nylon.

Julia's assailant approached her, placed a knife to her throat, pulled her night shirt over her face, and tied her hands with a cord. Julia was taken to her mother's

bedroom, where she was vaginally raped. During this, the assailant ordered Julia to loudly yell "Fuck me." When she was hesitant, the assailant repeatedly called Julia a "bitch" and struck her in the head.

After this, Julia was forced to perform fellatio on the intruder. He instructed Julia about the manner in which he wanted this done. When the assailant ejaculated in Julia's mouth, she was forced to swallow the semen.

When the assailant had ejaculated, he found some Vaseline and attempted to anally rape her. When he was finished, the assailant took Julia back into the living room and tied her to a chair with telephone cord he cut from the home's phone.

After the assailant left, Julia untied herself and, unable to use the phone in her home because it had been disabled, went to a neighbor's and called police. The police took Julia to the hospital. Staff there found that Julia had sustained vaginal lacerations, wrist abrasions, and anal bruising.

Later that morning, at approximately 6:45 a.m., thirteen (13) year old Richard Bruch was raped in his home, located at 1305 Ravenna Boulevard N.E. in Seattle. This residence is located approximately 2.5 miles from the Hanson home. Richard lived there with his mother and younger sister. He attended the same school as Matt McKiernan.

Richard's mother left for work around 6:30 a.m. on December 5th. After she left, Richard took a shower. As he was returning to his bedroom, he was confronted by a white male inside the residence. The man was holding a knife and wearing a mask made out of what appeared to be nylon. It was later discovered that the assailant had disabled the phone when he entered the home.

The intruder ordered Richard into his room, closed the door, and made Richard lie face down on the bed. The assailant then taped Richard's hands together, and his eyes closed, with adhesive tape. He also stuffed a sock, which he had brought with

him, in Richard's mouth and covered that with adhesive tape. After doing this, the intruder unclothed both Richard and himself.

Once he was nude, the intruder sexually assaulted Richard for approximately 90 minutes. During this time, the assailant anally raped Richard, forced Richard to fondle his penis, and performed oral sex on Richard. Prior to anally raping Richard, the assailant applied a Vaseline-type lubricant to Richard's anus and his own penis.

At approximately 9:30 a.m., Richard's sister opened the door to his room and saw what was happening. The intruder looked at her. He told her she was next. When she fled, the assailant put on his clothes and began stuffing some of Richard's clothes into a bag he had brought with him. He then left the residence.

Dr. Robert Keppel will testify at trial to assist the Petitioner in proving that Alan Meirhofer committed the sexual assaults of Julia Hanson and Richard Bruch. Dr. Keppel began his career in law enforcement in 1967 when he joined the King County Sheriff's Office (KCSO) as a patrol officer. From 1974 to 1982, Dr. Keppel was a detective with the homicide unit of the KCSO. During his tenure with the homicide unit, Dr. Keppel investigated several of the murders committed by Ted Bundy. From 1982 to 1999, Dr. Keppel was the Chief Criminal Investigator for the Office of the Attorney General. In 1992, Dr. Keppel received a Ph.D. in Criminal Justice from the University of Washington. Since 1999, Dr. Keppel has been the Director of the Institute for Forensics in Seattle.

Beginning in 1981, Dr. Keppel has been called in to assist other police agencies in their investigations of serial murders. He has assisted the Atlanta Police Department (Atlanta child killings committed by Wayne Williams), the Santa Barbara Sheriff's Office (Night Stalker cases), and the King County Police (Green River killings).

Dr. Keppel has also written or co-written several publications. These have included articles touching on serial murders, the Homicide and Investigation Tracking System (HITS), and signature analysis of homicides.

Dr. Keppel has testified in Washington State and federal courts numerous times in the last ten years. He has testified about the signature analysis of crimes in three cases: State v. George Russell, King County cause 91-1-001827; discussed herein at pages 19-21; State v. David Wayne Kunze, Clark County cause 96-1-00773-1; and State v. Robert Parker, King County cause 96-1-07511-2SEA.

Dr. Keppel analyzed all of the crimes which Meirhofer pled guilty to, as well as those which he is suspected of committing. These crimes include all those previously described. The purpose of the analysis was to determine whether, in Dr. Keppel's expert opinion, the same person committed these crimes. Using two separate methodologies, Dr. Keppel concluded that the same person committed the crimes against Matthew McKiernan (and the other residents of his home), Julia Hanson, and Richard Bruch.

Dr. Keppel first examined these crimes using signature analysis. In attempting to determine whether several sexual offenses have been committed by the same person, law enforcement experts such as Dr. Keppel search for any signature elements which may be present in the crime. Signature elements of a crime are those actions of the rapist which go beyond what is necessary to accomplish the rape. The signature aspects of a crime differ from the acts which constitute the offender's modus operandi. Modus operandi denotes the actions the offender must take in order to commit the crime.

Dr. Keppel looked at the three offenses which occurred in Seattle on December 5, 1986. Aside from the obvious geographical and temporal proximity of the crimes, Dr. Keppel found several of the same signature elements present in each offense. These

signature elements led him to conclude the same person who burglarized the Matthew McKiernan residence and assaulted the residents of that home also committed the rapes of Julia Hanson and Richard Bruch. The signature elements present in each of these crimes included the pre-planning engaged in by the perpetrator, the actions taken in order to enhance the victims' terror (the use of a knife and mask, and the disabling of the telephone lines), the increasing amount of time spent with each victim (connoting the offender's need to control the victim), and the actions taken to diminish the ability of the victim to resist (again connoting the offender's need for control).

Dr. Keppel also analyzed the crimes attributed to Meirhofer using the Homicide Investigation Tracking System (HITS) database. From September 1987 through 1999, Dr. Keppel was the administrator of HITS. The HITS unit consists of a program manager, six investigators (all of whom have served as law enforcement officers specializing in the investigation of homicides and/or sexual assaults), two computer analysts, one criminal information analyst, and two support staff. HITS contains a homicide and sexual assault database. The investigators are responsible for specific geographic regions of Washington and the law enforcement agencies in those areas. Each investigator acts as a liaison with those agencies and collects police reports on each homicide and serial or predatory sexual assault which occurs in their region. A HITS form is completed for each sexual assault. The sexual assault HITS form breaks down a sexual assault into 199 discrete variables. HITS began the systematic collection of serial and predatory sexual assault cases in July 1990. As of June 3, 1996, the HITS database contained records of 6,377 sexual assaults, both solved and unsolved, involving serial rape and stranger rape investigations.

Using the HITS sexual assault database, Dr. Keppel performed a search to determine the frequency with which some of the elements associated with the crimes attributed to Alan Meirhofer have occurred. All of the victims attributed to Meirhofer

were less than 15 years old. Sexual assaults against male victims under that age constituted only 503 of the 6,377 cases in the HITS database. Of those 503 cases, in only 33 cases did the offender use a weapon. In only 5 cases did the offender bind the victim. The offender used a mask or disabled utilities in only 3 cases. Finally, there were no cases in which the offender: 1) Disabled the utilities; or 2) Used a weapon and a mask or disabled the utilities; or 3) Used bindings and a mask or disabled the utilities; or 4) Used a weapon, bindings, and mask or disabled the utilities. This information led Dr. Keppel to conclude that, "The findings of the search clearly indicate that rapists who select male victims under 15 years of age, do not use weapons, wear masks, and disable utilities in the victim's home all at the same time. It is truly a rare event when you discover one who does."

On July 18, 1987, Meirhofer committed two sexually violent offenses in Whatcom County, both against the same victim. In the early morning hours of that date, thirteen (13) year old Pat Freeman was asleep in his bed in his home in Blaine, Washington. He awoke to find Meirhofer leaning over him. Meirhofer was armed with a hunting knife, which he held to the victim's neck. In addition, he was wearing a mask and gloves. Meirhofer taped the victim's mouth shut, told him to remain silent, and carried the victim out of the home. At some point during the offense, Meirhofer disabled the phone line to the home.

Meirhofer carried the victim to his vehicle, and he put the victim into the back seat and drove to a rural location. Once there, Meirhofer ordered the victim out of the car and told him to disrobe. After the victim had taken his clothes off, Meirhofer also disrobed. At this time, Meirhofer discarded his mask, and the victim was able to see him clearly. Meirhofer then fondled the victim's genitals and had forced anal intercourse with the boy. He also inserted a nightstick-like object in the victim's anus and simulated anal intercourse.

After assaulting the victim, Meirhofer allowed him to dress. Meirhofer then drove Pat to another isolated location where the sexual assault was repeated. After this, Pat was ordered into the back seat of Meirhofer's car and was driven to a location near his home. When he let Pat out of the car, Meirhofer told him not to tell anyone what had occurred. Meirhofer told Pat that he knew where the boy lived. Meirhofer commented that he would burn down Pat's home if Pat revealed what had occurred.

During subsequent interviews with the police, Pat stated that he had seen Meirhofer cruise by his Blaine home several times the day before the assault. However, Pat had never spoken to Meirhofer prior to the time he was kidnapped and raped.

Meirhofer was quickly identified by police as the person who had assaulted Pat. However, he managed to elude police until October 23, 1987. On that date, police, attempting to arrest Meirhofer for the Blaine offense as well as for several King County warrants, spotted him driving through Bellingham, Washington. When they tried to stop Meirhofer, he led the police on an extensive high speed chase through urban Bellingham. At times during the pursuit, police estimated Meirhofer was driving in excess of 80 miles per hour in a 25 mile per hour zone. Meirhofer ran several stop signs and stop lights. At one point, Meirhofer crashed into a home.

When the police finally stopped Meirhofer's vehicle, he refused to exit the car. Police had to pry his hands from the steering wheel. In response to police questions about his identity, Meirhofer gave the police a false name and identification card.

During their investigation into the kidnap and rape of Pat Freeman, police in King County identified Meirhofer as a suspect in the crime spree which occurred in Seattle on December 5, 1986. When Meirhofer's residence in Bellingham was searched by police after his arrest, they found Megan McKiernan's jewelry box. At a subsequent line-up, Suzanne Holt positively identified Meirhofer as the person who burglarized their home on December 5th and assaulted her and her housemates.

On May 4, 1988, in Whatcom County Superior Court, Meirhofer was convicted of Rape in the First Degree with a Deadly Weapon and Kidnapping in the Second Degree. On May 11, 1988, Meirhofer was sentenced to 99 months incarceration for these offenses.

For his actions in attempting to escape from the police on October 23, 1987, Meirhofer was charged with Eluding a Pursuing Police Vehicle. He was later convicted of this offense and received a maximum sentence of 90 days for this offense.

After the Whatcom County cases were adjudicated, Meirhofer was charged in King County with First Degree Burglary and Second Degree Assault for the incidents involving Suzanne Holt and the McKiernans. He was charged with First Degree Burglary while armed with a deadly weapon and First Degree Rape while armed with a deadly weapon for the sexual assault of Julia Hanson. He was also charged with First Degree Burglary while armed with a deadly weapon and First Degree Rape while armed with a deadly weapon for the sexual assault of Richard Bruch. Meirhofer pled guilty to the charges relating to Suzanne Holt and the McKiernans. However, the remaining charges were dismissed.

Dr. Anna Salter, an expert in the evaluation and treatment of sex offenders, assessed Meirhofer at the request of the Petitioner. Dr. Salter is a licensed psychologist in Wisconsin and has performed evaluations of persons to determine whether they meet the criteria for commitment as sexual violent predators.

Dr. Salter has reviewed all of the discovery the Petitioner has accumulated regarding Meirhofer, his personal history, and his criminal history. The discovery is over 2,000 pages. Meirhofer refused to comply with this Court's order to meet with the Petitioner's expert, so Dr. Salter has not interviewed Meirhofer. However, she has reviewed the Petitioner's deposition of Meirhofer.

Dr. Salter believes, to a reasonable degree of psychological certainty, that Meirhofer currently suffers from two mental abnormalities, as that term is defined in

RCW 71.09.020(2): Pedophilia and Paraphilia, Not Otherwise Specified (Nonconsent or Rape). Dr. Salter will testify at trial about these mental abnormalities and the factual bases of her opinion that Meirhofer suffers from them.

Dr. Salter also believes, to a reasonable degree of psychological certainty, that Meirhofer currently suffers from a Personality Disorder, Not Otherwise Specified, with antisocial features. Dr. Salter will testify at trial about the characteristics of this personality disorder and the factual bases for her opinion that Meirhofer suffers from this.

Finally, Dr. Salter will testify that she believes, to a reasonable degree of psychological certainty, that Meirhofer is likely to engage in predatory acts of sexual violence if he is not confined to a secure facility. Dr. Salter has used three actuarially-based risk assessment instruments in reaching her conclusion on this question. These risk assessment instruments are the Minnesota Sex Offender Screening Tool, Revised (MnSOST-R), the Static 99; and the Rapid Risk Assessment for Sex Offense Recidivism (RRASOR).

The MnSOST-R is a 16 item risk assessment tool developed by the Department of Corrections in Minnesota to assess sex offenders to determine whether they meet the criteria for civil commitment under Minnesota's equivalent of RCW 71.09. This instrument includes 12 static factors (immutable facts empirically determined to be associated with recidivism, such as the number of prior sex offenses) as well as 4 dynamic factors (those which can change over time, such as completion of sex offender treatment). A cross-validation study of this instrument was released in March 2000. This study shows the MnSOST-R currently has the highest correlation with sex offense recidivism of any of the risk assessment instruments in use.

The scoring range on the MnSOST-R is from 0 to 31. However, high scores are extremely rare. For example, 13 is the score recommended by the authors of the tool

as an automatic referral for civil commitment. 88% of the offenders who scored 13 or higher on the instrument sexually reoffended upon release.

Meirhofer scored a 16 on the MnSOST-R. Of the offenders who achieved this score in the norming sample, 92% of them sexually reoffended within 6 years of their release.

The Static 99 consists of 10 static variables. The scoring range in this instrument is from 0 to 12. As with the MnSOST-R, high scores are rare. Persons who score higher than 5 are considered a high risk to reoffend. Offenders who scored in this range reoffended at a rate of 52% over a 15 year period following release. Meirhofer scored 7 on this instrument.

The RRASOR has only 4 items, all of which are static. Meirhofer scored a 4 on this instrument. Offenders who achieved this score reoffended at a 49% rate in the 10 years following their release from confinement.

Research in the risk assessment arena supports the adjustment of the results reached using the instruments based upon other factors which studies have shown to be related to recidivism, but which are not accounted for in the instruments. Some of these factors include sex offender treatment completion, a high motivation for sex offender treatment, high level of offense disclosure, and honesty. Dr. Salter believes that Meirhofer's failure to take responsibility for his offenses, his refusal to enter into inpatient treatment, and his lack of remorse indicate that his actuarially derived level of risk should not be lowered.

Dr. George Nelson, a licensed psychologist, assessed Meirhofer for the Department of Social and Health Services (DSHS) pursuant to RCW 71.09.040(4). Although this Court ordered Meirhofer to submit to a clinical interview with Dr. Nelson, he refused to do so. Therefore, Dr. Nelson's assessment was based upon the same documentary evidence available to Dr. Salter.

Dr. Nelson believes, to a reasonable degree of psychological certainty, that Meirhofer suffers from one mental abnormality, as that term is defined in RCW 71.09.020(2): Pedophilia. He will testify about the characteristics of this mental abnormality and the factual bases of his diagnosis.

Dr. Nelson also believes, to a reasonable degree of psychological certainty, that Meirhofer suffers from a Personality Disorder Not Otherwise Specified with antisocial traits. Dr. Nelson will testify about this personality disorder and the factual bases of his opinion that Meirhofer suffers from this.

Finally, Dr. Nelson believes, to a reasonable degree of psychological certainty, that Meirhofer is likely to engage in predatory acts of sexual violence if he is not confined to a secure facility. Dr. Nelson used the Violence Risk Appraisal Guide (VRAG), an actuarial tool used to predict violent reoffense. This instrument uses 12 static variables empirically associated with recidivism. Meirhofer scored a 7 on the VRAG. This correlates to a 54% likelihood of violent reoffense within ten years of release.

III. EVIDENTIARY ISSUES

A. REQUISITES OF COMMITMENT AS A SEXUALLY VIOLENT PREDATOR

In order to involuntarily commit the Respondent under RCW 71.09, the State must prove beyond a reasonable doubt that he is a sexually violent predator. RCW 71.09.060. The term "sexually violent predator" is defined in RCW 71.09.020(1). Using that definition, the Respondent must be committed if it is shown beyond a reasonable doubt that: 1) He has been charged with or convicted of at least one crime of sexual violence; 2) He currently suffers from a mental abnormality and/or personality disorder; and 3) Meirhofer's mental abnormality and personality disorder make him more likely than not to engage in predatory acts of sexual violence if he is not confined in a secure

facility. The terms "crimes of sexual violence," "mental abnormality," and "predatory" are all defined in RCW 71.09.020.

In practice, the first two elements of the State's case – the predicate conviction and whether the Respondent suffers from a mental condition which predisposes him to the commission of sexually violent acts – are rarely contested at trial. In almost all sexually violent predator trials, the parties focus on the third and final element of the definition of a sexually violent predator: Whether the Respondent's mental condition makes him more likely than not to engage in predatory acts of sexual violence if he is not confined in a secure facility for treatment.

In order to sustain its burden of proof on the critical issue of future dangerousness, the State presents the testimony of expert psychologists who relate to the fact-finder an opinion on whether the respondent must be detained in a secure facility for treatment because of the danger he or she poses to society. The factual predicate of the expert's opinion comes from a review of all of the records relating to the Respondent generated by departments of corrections, courts, law enforcement agencies, and prior mental health treatment providers. In addition, if the Resident submits, the expert conducts a clinical interview with the respondent.

The expert generally uses two methods to reach an opinion on future dangerousness. In the first, the expert relies upon their experience in diagnosing and treating sex offenders in order to reach a clinical opinion about the Respondent's risk to reoffend. In addition, the expert also uses one or more actuarial instruments to reach an opinion on the respondent's future dangerousness. These instruments are based upon studies of violent and sexually violent persons. The criminal, social, and sexual histories of these persons are compiled prior to their release from a secure facility. At some point after their release, the researchers determine which persons have violently or sexually violently reoffended, and the personal characteristics shared by the

recidivists. Using statistical modeling, the researchers then create an instrument which can be applied to other persons to determine the extent to which they resemble those persons who have reoffended upon release from prison or another secure environment.

B. APPELLATE AUTHORITY IN SEXUALLY VIOLENT PREDATOR CASES

There are four primary cases which govern the analysis of legal and evidentiary issues arising in sexually violent predator actions. In 1993, the Washington Supreme Court upheld the constitutionality of RCW 71.09 in In re Young, 122 Wn.2d 1, 857 P.2d 989. In that case, the Court rejected substantive due process challenges holding that the law survives strict scrutiny since it serves a compelling government interest in a narrowly tailored fashion. The Court held the law is consistent with procedural due process because of the procedural protections afforded persons subject to commitment as sexual predators. The Court stated RCW 71.09 does not violate equal protection since there is a rational basis for treating sex predators differently than the larger group of mentally ill. Finally, the Court rejected ex post facto and double jeopardy challenges, holding that the law is not punitive and is a civil, not criminal, law.

In 1997, the United States Supreme Court upheld the constitutionality of Kansas' sexually violent predator law in Kansas v. Hendricks, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). The Kansas statute is identical to Washington's in all relevant respects. The Supreme Court followed the lead of the court in Young and rejected substantive and procedural due process, equal protection, and double jeopardy challenges to the statute.

Two other sexually violent predator cases recently decided by the Washington State Supreme Court provide important guidance. In re the Detention of Campbell, 139 Wn.2d 341, 986 P.2d 771 (Oct. 21, 1999); In re the Detention of Turay, 139 Wn.2d 379, 986 P.2d 790 (Oct. 21, 1999). In these cases, the Supreme Court reiterated its holding in Young that the involuntary civil commitment scheme outlined in RCW 71.09 is

constitutional. In addition, the Court discussed numerous evidentiary issues arising in sex predator cases, including the holdings that victim testimony in sex predator cases is admissible because of its highly probative nature; that evidence of the conditions at the Special Commitment Center (SCC) is irrelevant and inadmissible at the commitment trial; and that expert testimony on the issue of future dangerousness is reliable and admissible.

C. THE TESTIMONY OF MEIRHOFER'S PRIOR VICTIMS IS ADMISSIBLE SINCE IT IS HIGHLY PROBATIVE EVIDENCE DEMONSTRATING BOTH HIS MENTAL ABNORMALITY AND PERSONALITY DISORDER, AS WELL AS THE DANGER HE POSES IF HE IS RELEASED

At trial, the Petitioner intends to call Meirhofer's past victims as witnesses to testify about his sexual abuse of them. In the seminal case on sexually violent predator actions, the Washington Supreme Court recognized the importance of such evidence. In re Young, 122 Wn.2d 1, 857 P.2d 989 (1993). In that case, the trial court permitted Young's victims to testify about the facts surrounding Young's sexual assault of them. The trial court overruled Young's objection that such evidence was irrelevant and unfairly prejudicial.

On appeal, the Supreme Court held that testimony by Young's victims regarding the sexual assaults perpetrated by him was properly admitted. Id. at 53. The court held that prior sexual history is "highly probative" of the potential for violence of the alleged sexually violent predator. Id. The court reasoned that "the manner in which the previous crimes were committed has some bearing on the motivations and mental states of the petitioners, and is pertinent to the ultimate question here." Id.

This holding was recently reiterated by the Court in In re Turay, 139 Wn.2d 379, 986 P.2d 790 (1999). In that case, the trial court refused to order the State to accept Turay's offer to stipulate to the convictions he received for those offenses subsequently

described by the testimony of his victims. The trial court permitted Turay's victims to testify about the facts of the offenses.

The Court held that Turay's victims were properly permitted to testify. The Court rejected Turay's claim that such testimony was unfairly prejudicial and prohibited by ER 403. Turay, 986 P.2d at 801-802. In doing so, the Court focused on the highly probative nature of the evidence and the materiality of the issues which such evidence illuminated. Victim testimony is not used solely to prove the existence of a predicate conviction. Victim testimony is used to prove all of the elements at issue in a sex predator case, including the existence of a mental abnormality/personality disorder and the respondent's future dangerousness. Id.

D. ADMISSIBILITY OF MEIRHOFER'S NON-SEXUAL CRIMINAL HISTORY

The Young court held that the trial court had committed harmless error by admitting evidence of Young's prior conviction for a bomb threat. The court did not "perceive any relevance" to the testimony. Young, at 54.

However, at the time Young was tried, risk prediction was based upon the clinical opinion of the mental health expert. Actuarial instruments were not used. The current state of science of predicting predatory and sexually violent recidivism requires consideration of the subject's entire offense history, sexual and non-sexual.[1] Therefore, Meirhofer's history of non-sexual criminal offenses, including his convictions for eluding a pursuing police officer, his juvenile burglary convictions, his driving while intoxicated convictions, and the criminal charges relating to the sexual assaults of Julia Hanson and Rick Bruch, are relevant in the context of contributing to the basis of the expert opinion testimony.

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[1] For example, one of the items on the Violence Risk Appraisal Guide (VRAG), a commonly used actuarial risk assessment instrument and one used by Dr. Nelson in this case, is the Cormier-Lang criminal history index. This index measures an offender's criminal versatility by assigning varying levels of points for each different type of offense which the individual has committed.

The Young decision finding error in the admission of Young's conviction for a bomb threat should be limited to the facts of that case. Assuming a proper foundation is established, Meirhofer's non-sexual criminal history should be admitted to support expert opinion on the issue of probability of reoffense.

E. ADMISSIBILITY OF EXPERT OPINION OF FUTURE DANGEROUSNESS

The issue of expert testimony regarding future dangerousness was resolved in the Young decision and reiterated in Campbell, supra. These holdings were based upon years of experience with expert testimony on issues of future danger in RCW 71.05 commitments, sentencing proceedings, and other matters. The admission of such testimony is consistent with Frye and ER 702.

1. The *Young* Decision Approved Admission of Predictions of Future Danger in Sexually Violent Predator Proceedings

In Young, the court considered whether testimony regarding predictions of future dangerousness for sexually violent predators is "generally accepted in the scientific community." The court held that future danger testimony was properly admitted, despite the petitioners' claims that there was "no basis" for such testimony.

The Young court noted that a Frye inquiry need only be performed where the testimony at issue is based on "**novel** scientific procedures." 112 Wn.2d at 56 (emphasis added). If a novel scientific procedure is involved, the primary focus of a Frye inquiry is to determine "whether the evidence being offered is based on established scientific methodology." Id., citing State v. Cauthron, 120 Wn.2d 879, 889, 846 P.2d 502 (1993). It is necessary for the evidence to have a "valid, scientific basis." Id.

The Supreme Court held that psychological testimony in sex predator cases on the issue of a person's risk to reoffend is not novel, and thus a Frye inquiry is not necessary. Relying on the due process reasoning from In re Harris, 98 Wn.2d 276, 280,

654 P.2d 109 (1982), and State v. Adams, 115 Wn.2d 445, 454, 799 P.2d 244 (1990), the Young court held "that predictions of future dangerousness are sufficiently accurate and reliable." 122 Wn.2d at 56. The court noted that a contrary holding would severely impact existing law: "Petitioner's argument would eviscerate the entire law of involuntary commitment as well as render dubious the numerous other areas where psychiatry and the law intersect." Id.

Moreover, the court held that psychological testimony did not present a novel question necessitating a Frye inquiry:

> **[T]he sciences of psychology and psychiatry are not novel**; they have been an integral part of the American legal system since its inception. Although testimony relating to mental illnesses and disorders is not amenable to the types of precise and verifiable cause and effect petitioners seek, the level of acceptance is sufficient to merit consideration at trial. As Justice White pointed out in Foucha [504 U.S. 71, 118 L. Ed. 2d 437, 112 S. Ct. 1780, 1789 (1992)], "such opinion is reliable enough to permit courts to base civil commitments on clear and convincing medical evidence that a person is mentally ill and dangerous."

122 Wn.2d at 57 (emphasis in original).

The court further noted that it was appropriate to "pay particular deference to reasonable legislative judgments' about the relationship between dangerous behavior and mental illness." Id. at 57. The United States Supreme Court's recent decision upholding Kansas' sexually violent predator law verified this reasoning, holding that when a legislature "undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation." Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501, 514, 117 S. Ct. 2072 (1997). See also, e.g.; Barefoot v. Estelle, 463 U.S. 880, 77 L. Ed. 2d 1090, 103 S. Ct. 3383, reh. denied 104 S. Ct. 209 (rejecting that the unreliability of psychiatric predictions of long-term future dangerousness was an established fact within the profession).

Since Young, the Court of Appeals has routinely affirmed the admission of expert testimony on future dangerousness in sexually violent predator actions. The admission of such evidence is proper based upon "both clinical and empirical research." In re Aguilar, 77 Wn. App. 596, 601, 892 P.2d 1091 (1995); see also In re Twining, 77 Wn. App. 882, 894 P.2d 1331 (1995), rev. denied, 127 Wn.2d 1018, 904 P.2d 299.

The holdings of Young, Hendricks, Aguilar, and Twining were recently reaffirmed by the Washington Supreme Court in In re Campbell, 139 Wn.2d 341, 986 P.2d 771 (1999). In that case, Campbell made the tired argument that predictions of future dangerousness should be inadmissible since they are inherently unreliable. Campbell, 986 Wn.2d at 789. The Court rejected this argument, citing its holding in Young and the United States Supreme Court's holding in Barefoot v. Estelle, *supra*. The Court also noted that the State's expert was subject to cross-examination regarding his opinion.

An examination of the controlling authority demonstrates that predictions of future dangerousness in sex predator cases are not subject to a *Frye* analysis. Such predictions made by a qualified expert are admissible.[2]

2. Future Danger Evidence is Admissible Under *Frye* and ER 702

Even if a *Frye* inquiry is conducted, future dangerousness testimony is still admissible. As the Supreme Court held in State v. Russell, 125 Wn.2d 24, 68-75, 882 P.2d 747 (1994), "there is no prohibition against using well-founded statistics to establish some fact that will be helpful to the trier of fact."

a. Empirical recidivism statistics are admissible under *Frye*

In the studies and scientific literature upon which Drs. Salter and Nelson rely, the authors took samples of known recidivists and determined what actuarial factors (e.g.,

[2] Any questions regarding the various components of the actuarial instruments used to predict reoffense (e.g. size or quality of the database) go to the weight to be given to the result, not the admissibility of the testimony. Campbell *supra* at 779, fn 3.

age, marital status, prior offenses, etc.) characterized each person. Because the study groups were composed of known offenders, the authors were able to determine a recidivism "base rate" for the group as a whole. The various actuarial factors were then compared to determine who reoffended above the base rate and who reoffended below the base rate. Based upon the recidivism factors identified for known offenders, Drs. Salter and Nelson were able to compare the existence of such factors with Meirhofer. In the end, the studies provide a basis for supplementing and augmenting Drs. Salter's and Nelson's clinical judgment that Meirhofer is more likely than not to commit future acts of predatory sexual violence.[3]

The scientific principles underlying the studies in question are not novel. To the contrary, anyone with a background in basic statistics could formulate a study to differentiate known recidivists from nonrecidivists. Drs. Salter's and Nelson's reliance on these studies, in combination with their clinical judgment, is also not novel, but is long-accepted practice in forensic psychology. Each study relied upon by the doctors has been published in a recognized source--either a book or a peer-reviewed article in a psychological journal.

The studies relied upon by the doctors are nothing more than published databases. In State v. Russell, 125 Wn.2d 24, 68-75, 882 P.2d 747 (1994), the Washington Supreme Court affirmed the trial court's ruling that Frye does not apply to databases. The Russell decision examined the admissibility of expert testimony regarding HITS and VICAP – two databases which "use forms, filled out by local law

[3] These studies and Drs. Salter's and Nelson's partial reliance on them is far removed from the purely scientific matters more typically reserved for a Frye inquiry. The doctors will not be testifying to a magical device like a polygraph machine or DNA analysis that could identify Meirhofer with absolute precision. The Frye test applies to novel scientific principles like DNA and breathalyzers, not routine expert testimony on psychological and medical issues. See Bruns v. Paccar, Ind., 77 Wn. App. 201, 215, 809 P.2d 469 (1995) ("A Frye inquiry address novel scientific methodology; it does not deal with medical opinion based on established scientific technique.").

enforcement officers, listing the various characteristics of homicides in Washington and the nation." Id. at 69. "Testimony which does not involve new methods of proof or new scientific principles from which conclusions are drawn need not be subjected to the Frye test" Id. Thus, the court held that:

> We agree with the trial court that the Frye test clearly was inapplicable to the expert testimony regarding the HITS and VICAP programs. These programs are nothing more than sophisticated record-keeping systems.

Id. at 70. "[T]here is no prohibition against using well-founded statistics to establish some fact that will be helpful to the trier of fact." Id.

Once the general principles underlying future dangerousness testimony have been accepted, all other issues go to the weight of the testimony, not its admissibility. For example, questions regarding the size of the database, whether it is representative of the overall population (i.e. cross-validation), the quality of the database, etc., go to weight, not admissibility under Frye. State v. Copeland, 130 Wn.2d 244, 272-73, 922 P.2d 1304 (1996); In re Campbell, 139 Wn.2d 341, __; 986 P.2d 771, 779 (1999).

b. Empirical recidivism statistics are admissible under ER 702

Although empirical studies are not subject to a Frye inquiry, such evidence must nonetheless satisfy ER 702. Namely, expert testimony is admissible when "(1) the witness qualifies as an expert and (2) the expert testimony would be helpful to the trier of fact." Young, 122 Wn.2d at 57-58. Drs. Salter's and Nelson's opinions meet these criteria.

The Young decision determined that expert testimony is helpful to the trier of fact in sexually violent predator cases: "the expert testimony was certainly helpful to the trier of fact – psychiatric testimony is central to the ultimate question here: whether petitioners suffer from a mental abnormality or personality disorder." Id. at 58. Certainly, with regard to empirical risk factors, it is helpful for the jury to know if persons similarly situated to Meirhofer reoffended in a sexually violent manner. Drs. Salter's and

Nelson's testimony and their reliance on empirical studies will present this correlation. Many of these factors (e.g. psychopathy, the existence of pedophilia, etc.) are not within the common knowledge and experience of laypersons.

In determining whether evidence is admissible under ER 702, the court is allowed to consider whether the evidence is reliable. State v. Maule, 35 Wn. App. 287, 294-95, 667 P.2d 96 (1983). However, the quantum of reliability necessary to submit the evidence to the fact-finder under ER 702 is relatively low:

> [C]ourts have required that the factual, informational, or scientific basis of an expert opinion, including the principle or procedures through which the expert's conclusions are reached, **must be sufficiently trustworthy and reliable to remove the danger of speculation and conjecture and give at least minimal assurance that the opinion can assist the trier of fact.**

Id. (emphasis added).

Washington decisions have never applied a standard of absolute reliability to determine the helpfulness of future dangerousness evidence under ER 702. Indeed, the Young court recognized that "predictions of future dangerousness do not violate due process, **despite the inherent uncertainties of psychiatric predictions.**" 122 Wn.2d at 56. To require a high degree of certainty would "eviscerate the entire law of involuntary commitment as well as render dubious the numerous other areas where psychiatry and the law intersect." Id. In approving future dangerousness testimony, the court stated that it was "reliable enough":

> Although testimony relating to mental illnesses and disorders is not amenable to the types of precise and verifiable cause and effect relationship petitioners seek, the level of acceptance is sufficient to merit consideration at trial. As Justice White pointed out in Foucha, "**such opinion is reliable enough to permit the courts to base civil commitments on clear and convincing evidence that a person is mentally ill and dangerous.**"

122 Wn.2d at 57 (emphasis added). Despite these inherent flaws, the Supreme Court held that "the expert testimony was certainly helpful to the trier of fact." Id. at 58.

F. *HENDRICKS* DOES NOT REQUIRE A TOTAL LACK OF VOLITIONAL CONTROL IN ORDER TO COMMIT A SEXUALLY VIOLENT PREDATOR

Meirhofer may claim that the RCW 71.09.020(2) definition of "mental abnormality" is deficient because, citing Kansas v. Hendricks, 521 U.S. 346, 138 L. Ed. 2d 501 (1997), it does not "comply with the Hendricks requirement which narrows the group to those who are unable to control their actions." This argument has no legal merit.

In Hendricks, the Supreme Court expressly held that the Kansas statute's definition of "mental abnormality" is consistent with substantive due process. The definition of "mental abnormality" found in RCW 71.09 is identical to that found in the Kansas statute, which the Court approved in Hendricks:

> Compare RCW 71.09.020(2): "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.
>
> with Kan. Stat. Ann.. Sec. 59-29a02(b): "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

This definition (either one) does not require a total lack of volitional control, but only a "condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent acts." Kan. Stat. Ann. Sec. 59-29a02(b).

Apart from specifically approving this definition, the Hendricks opinion noted that a "volitional impairment" is sufficient to justify commitment:

> We have sustained civil commitment statutes when they have coupled proof of dangerousness with the proof of some additional factor, such as a "mental illness" or "mental abnormality." These added statutory requirements serve to limit involuntary civil confinement to those who suffer from a **volitional impairment** rendering them dangerous beyond their control. The Kansas Act is plainly of a kind with these other civil

> commitment statutes: It requires a finding of future dangerousness, and then links that finding to the existence of a "mental abnormality" or "personality disorder" **that makes it difficult, if not impossible,** for the person to control his dangerous behavior. Kan. Stat. Ann. Sec. 59-29a02(b) (1994).

138 L. Ed. 2d at 513 (emphasis added; citations omitted). Therefore, there is no basis for any instruction modifying, or argument in contravention of, RCW 71.09.020(2).

G. THE STATUTE DOES NOT IMPERMISSIBLY CONFUSE OR DILUTE THE BEYOND A REASONABLE DOUBT BURDEN OF PROOF WHICH THE STATE BEARS AT TRIAL

The State's constitutionally required burden of proof in a civil commitment case is clear-and-convincing or greater. Addington v. Texas, 441 U.S. 418, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979), In re Young, 122 Wn.2d 1, 857 P.2d 989 (1993). In many sexually violent predator cases, respondents have argued that RCW 71.09 is unconstitutional because the burden of proof for commitment it requires the State to meet is merely the preponderance-of-the-evidence standard. In support of their argument, these respondents cite that portion of the law which indicates that the State must prove the respondent is more likely than not to commit predatory acts of sexual violence if released.

However, this specious argument confuses a fact to be proven – that the person is more likely than not to commit future sexually violent acts if released – with the quantum of evidence the State must present to prove each of the factual elements of the cause of action. The Court should not be misled or confused by this argument.[4]

IV. MOTIONS IN LIMINE

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[4] California has a sexually violent predator statute similar to Washington's in most respects. See Cal. Welf & Inst.Code sec. 6600 et seq. The California Court of Appeals recently rejected this argument holding, "The reasonable doubt standard has not been circumvented or diluted. The meaning of the language of a statute is not to be found in metaphysical subtleties, which may make anything mean everything or nothing. Here the phrase, 'likely to engage in sexually violent criminal behavior' is not, as [the predator] would have us believe, a standard of proof. Rather, it is a prediction of dangerousness that the trier of fact must find has been proved beyond a reasonable doubt." People v. Buffington, 74 Cal.App.4th 1149, 88 Cal.Rptr.2d 696, 699 (1999).

The purpose of a motion in limine "is to dispose of legal matters so counsel will not be forced to make comments in the presence of the jury which might prejudice his presentation." State v. Evans, 96 Wn.2d 119, 123, 634 P.2d 845 (1981).

The above-referenced language was cited with approval in State v. Kelly, 102 Wn.2d 188, 193, 685 P.2d 564 (1984). Kelly reiterated the manner in which a trial court should consider motions in limine:

> In *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wn.2d 85, 91, 549 P.2d 483 (1976), we set forth the rules governing trial court consideration of motions in limine: [T]he trial court should grant such a motion if it describes the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn or which may develop during the trial, and if the evidence is so prejudicial in its nature that the moving party should be spared the necessity of calling attention to it by objecting when it is offered during the trial.

Id. at 192.

A. EXCLUDE LAY WITNESSES FROM THE COURTROOM UNTIL AFTER THEY HAVE TESTIFIED

It is anticipated that Meirhofer will join the State in this standard motion. ER 615.

B. THERE SHOULD BE NO REFERENCE TO ANY ALLEGED PRIOR BAD ACTS OR CRIMES OF ANY OF THE STATE'S WITNESSES

The State does not know if Meirhofer intends to offer at trial any evidence of any alleged bad acts or crimes of any of the State's witnesses. If he intends to do so, the State asks that the Court preclude any such references at trial unless and until this Court rules such evidence admissible after a hearing held outside the presence of the jury.

C. PERMIT MEIRHOFER'S PRIOR VICTIMS TO TESTIFY WITHOUT REVEALING PRESENT ADDRESSES

All of Meirhofer's previous victims have requested that their current addresses not be revealed to him in open court. For their security and peace of mind, and given the lack of prejudice to Meirhofer, the State moves this Court to grant this request of the victims.

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Criminal Justice Division
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D. THERE SHOULD BE NO REFERENCE TO (1) THE FACT THAT RCW 71.09 *ET SEQ.* IS 'NEW' OR 'UNTESTED' LEGISLATION; (2) THE NAMES OR NUMBER OF OTHER PEOPLE CURRENTLY RESIDING AT THE SPECIAL COMMITMENT CENTER; AND (3) THE WISDOM, CONSTITUTIONALITY OR INTENT OF RCW 71.09 *ET SEQ*

The State moves this Court to order that there be no reference at trial in front of the jury to the date when the Statute was enacted, the number of persons who have been filed against under the law, the number of persons who have been committed under the law to date, the alleged wisdom or efficacy of the new law, or subjects of this general nature. Questions regarding these matters are not relevant in this action. ER 401, 402. The only reason such areas would be touched upon would be to unfairly prejudice the State in contravention of ER 403. The only issue that is relevant in this action is whether Meirhofer meets the criteria for civil commitment as a sexually violent predator. RCW 71.09.020(1), .060(1).

E. TREATMENT CONDITIONS AT THE SPECIAL COMMITMENT CENTER ARE IRRELEVANT TO THE ISSUES BEFORE THIS COURT

The conditions at the SCC are not relevant to determining the issues in this case – Meirhofer's mental abnormality and future dangerousness. It is anticipated that Meirhofer may attempt to discuss or enter into evidence certain orders from the federal district court in Turay v. Seling, No. C91-664WD. That action involves the injunction under which the SCC is operating to improve treatment conditions at the Center. Any reference to the federal injunction or other conditions at the SCC should be excluded as not relevant and unduly prejudicial.

The Washington Supreme Court recently addressed this issue in In re the Detention of Turay, 139 Wn.2d 379, 986 P.2d 790 (1999). At Turay's trial, the court granted the State's motion in limine to exclude evidence of the conditions of confinement at the SCC. The Supreme Court affirmed the trial court's ruling that such evidence was not relevant and should be excluded, stating:

> Turay's arguments in regard to this issue are meritless and demonstrate a fundamental misunderstanding of the purpose of an SVP commitment proceeding. The trier of fact's role in an SVP commitment proceeding, as the trial judge correctly noted, is to determine whether the defendant constitutes an SVP; it is not to evaluate the potential conditions of confinement. The particular DSHS facility to which a defendant will be committed should have no bearing on whether that person falls within RCW 71.09.020(1)'s definition of an SVP. Furthermore, a person committed under RCW 71.09 may not challenge the actual conditions of their confinement, or the quality of the treatment at the DSHS facility until they have been found to be an SVP and committed under the provisions of RCW 71.09.

Id. at 803 (citations omitted).

F. THERE SHOULD BE NO REFERENCE TO THE ALLEGED NATURE OR LENGTH OF DETENTION THAT AWAITS MEIRHOFER IF HE IS COMMITTED, NOR TO THE DISPOSITION OF ANY OTHER CASE FILED UNDER THE STATUTE

The State moves this Court to enter an order precluding any reference at trial in front of the jury to any alleged nature or length of detention that awaits Meirhofer if and when he is committed to the SCC. Again, the only issue properly before the Court in this matter is whether he meets the definition of a sexually violent predator. The nature or length of any detention that awaits Meirhofer if committed is wholly irrelevant to that determination and could only serve to distract the jury from the issue which they must resolve. Moreover, beyond the fact that Meirhofer will be committed for "control, care, and treatment until such time as the person's mental abnormality or personality has so changed that the person can be conditionally or unconditionally released," RCW 71.09.060(1), any reference to the nature or length of any resident's commitment, including Meirhofer's, would be wholly speculative.

G. THERE SHOULD BE NO REFERENCE TO ANY ALLEGED BLANKET FIFTH AMENDMENT PRIVILEGE OF MEIRHOFER TO REMAIN SILENT

The State moves this Court to enter an order precluding any reference at trial in the presence of the jury to any claim that Meirhofer has some blanket Fifth Amendment privilege to remain silent. As the Washington Supreme Court has ruled in In re Young, Meirhofer has no such blanket Fifth Amendment privilege. Young, 122 Wn.2d at 51-52.

H. MOTION TO PROHIBIT ANY REFERENCE TO ANY ALLEGED PRESUMPTION OF INNOCENCE OF THE RESPONDENT

Meirhofer has no presumption of innocence. This proceeding is civil, not criminal. In re Young, 122 Wn.2d at 18-25; In re Aqui, 84 Wn. App. 88, 101 (1994); In re Twining, 77 Wn. App. 882, 894-5 (1995). Therefore, the State requests an order precluding Meirhofer from referring to a non-existent right or presumption of innocence in front of the jury.

I. MEIRHOFER SHOULD BE PRECLUDED FROM ARGUING OR PRESENTING EVIDENCE ON ANY PROPOSED LESS RESTRICTIVE ALTERNATIVES TO CONFINEMENT IN A SECURE FACILITY

It is anticipated that Meirhofer may attempt to argue or present evidence that he should be released to a less restrictive alternative (LRA) to confinement in a secure facility. However, since Meirhofer has not yet been committed as a sexually violent predator, this Court has no jurisdiction to order him into treatment in an LRA. Therefore, he should be precluded from mentioning any prospective LRA at his initial commitment trial. The Court of Appeals has affirmed this. In re Brooks, 94 Wn. App. 716, 973 P.2d 486 (1999).

In Brooks, the court upheld the constitutionality of the Legislature's decision to preclude consideration of less restrictive alternatives to treatment in total confinement until *after* an individual has been committed. The court characterized RCW 71.09.090, which was amended to provide a procedure for considering LRAs in 1995, as follows:

"The statute as amended allows the court to consider less restrictive alternatives to total confinement of sexually violent predator, although not until after such person has been committed." Id. at 720.

In finding that the amended statutory procedure satisfied the concerns expressed in In re Young, 122 Wn.2d 1 (1993), the court noted that the 1995 amendments to RCW 71.09 "narrowed the definition of sexually violent predator" by adding "if not confined to a secure facility." Id. at 722. The court held that:

> Under the amended definition, only those persons who are likely to reoffend if not confined in a secure facility are classified as sexually violent predators. Thus, it is rational to impose total confinement before undertaking consideration of whether a less restrictive treatment program is a viable option.

Id.

The Statute therefore sets up two separate inquires: (1) the commitment phase, where the question includes confinement "in a secure facility," and (2) the subsequent less restrictive alternative phase, where the question is court ordered "less restrictive alternatives."

Meirhofer may attempt to circumvent the statute and Brooks by introducing evidence of less restrictive alternatives to combat the "secure facility" prong. Such an approach is plainly contrary to Brooks. Its effect is to collapse the commitment and LRA statutory stages into a single inquiry.

The "secure facility" question addressed in the initial commitment phase involves consideration of what voluntary community-based treatment, or security options a respondent might reasonably impose on himself, to minimize his danger to the community. If respondent proposes anything, the finder of fact must consider these proposals in determining whether the State has met its burden of proving the necessity of a secure facility. Here, in determining whether Meirhofer's level of dangerousness is sufficiently high to justify his commitment to a secure facility, the jury could consider

Meirhofer's voluntary plans for mitigating his dangerousness if released into the community.

The "secure facility" question in the commitment phase, however, does not include consideration of "less restrictive alternatives," which is a statutorily defined term of art meaning "court-ordered treatment in a setting less restrictive than total confinement." RCW 71.09.020(7). First, both the statute and Brooks prohibit consideration of LRAs prior to commitment. Meirhofer is now in the commitment phase of the Statute. If the State fails in its proof -- which provides the jurisdictional and constitutional basis for further confinement -- Meirhofer goes free without *any* available restriction from the court. "If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, *the court shall direct the person's release.*" RCW 71.09.060.

Second, consideration of LRAs to resolve the "secure facility" question is inappropriate because it would result in Meirhofer's release based on an LRA that this court can never order. Meirhofer would like to argue to the jury that certain hypothetical, court-ordered conditions -- i.e. less restrictive alternatives -- would keep him from reoffending. However, any claimed LRA that would prevent him from reoffending is by definition speculative because once the court relies on the LRA to determine that he is no longer a sex predator, the court loses jurisdiction to order the LRA. This interpretation of the statute and Brooks would cause the absurd result that -- based on an LRA that the court could never order (due to a lack of jurisdiction on the "secure facility" commitment question) -- the person does not qualify as a sexually violent predator. No one could ever be committed. See State v. CSG Job Center, 117 Wn.2d 493, 500 (1991) ("General rules of statutory construction instruct that . . . unlikely, absurd or strained results are to be avoided.").

In summary, the statute uses two different phrases in two different types of proceedings under RCW 71.09 -- commitment and LRA consideration. If these two

different phrases had the same meaning, as Meirhofer may argue, there would have been no reason for the Legislature to use distinct language in these two sections of the statute. It is a basic tenet of statutory construction that "where the Legislature uses certain statutory language in one instance, and different language in another, there is a different legislative intent." State v. Roberts, 117 Wn.2d 576 (1991).

IV. CONCLUSION

The Petitioner respectfully reserves the right to file additional motions once the Respondent has complied with the Court's discovery order.

DATED this 18th day of April, 2000.

CHRISTINE O. GREGOIRE
Attorney General

TODD R. BOWERS, WSBA #25274
Assistant Attorney General
Attorney for Petitioner State of Washington

APPENDIX B

RECEIVED
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CRIMINAL JUSTICE DIVISION
ATTORNEY GENERAL'S OFFICE

SPECIAL COMMITMENT CENTER
ANNUAL REVIEW
(June 2009 to April 2010)

Name:	Alan L. Meirhofer
Date of birth:	04.07.53
Jurisdiction:	Superior Court of Whatcom County
Cause number:	96-2-01119-0
Commitment date:	05.22.00
Evaluated by:	Rob Saari, Ph.D.
Date of Report:	April 28, 2010

Reason for Referral

Mr. Meirhofer is a 57-year-old Caucasian man whose history includes recurrent sexually coercive and violent offenses against young boys with whom he had no meaningful prior relationship. On May 22, 2000, Mr. Meirhofer was committed to the Special Commitment Center (SCC) for care, control, and treatment of his sexually violent behaviors and mental abnormality in accordance with RCW 71.09.060 (1). Pursuant to RCW 71.09.070, the purpose of this report is to evaluate whether Mr. Meirhofer continues to meet the definition of a sexually violent predator and to assess whether conditional release to a less restrictive alternative is in his best interest and conditions can be imposed that would adequately protect the community.

Evaluation Process

At the Special Commitment Center, the annual review of a resident's treatment progress is a process in which clinical information is synthesized from multiple data sources to determine whether the person continues to meet criteria for civil commitment and, if so, their eligibility for a less restrictive alternative than total confinement. Documentation relevant to Mr. Meirhofer's current status in treatment was reviewed to gather clinical impressions on the extent and quality of Mr. Meirhofer's involvement in activities such as sex offender group therapy, specialty classes, and individual therapy. Additionally, Mr. Meirhofer was interviewed on April 21, 2010.

Relevant Background

Mr. Meirhofer's annual examination addressed his current functioning and progress toward achieving readiness for a less restrictive alternative. Therefore, the focus of the evaluation was not on obtaining historical information that has already been gathered by previous evaluators. Information about Mr. Meirhofer's childhood, relationships with others in the community, educational history, vocational history, substance abuse history, sexual history, criminal history, incarceration adjustment history, and psychiatric history is included in *Appendix A*. It would be helpful for the reader who is not familiar with Mr. Meirhofer's history to read this information first.

Treatment Progress at the Special Commitment Center *(June 2009 to April 2010)*

Treatment at the Special Commitment Center (SCC) is designed to help residents understand the unique factors (i.e., dynamic risk factors) that place them at risk for re-offense so that they can develop skills that will allow them to avoid re-offense. Residents learn about the types of sexual attitudes, thought patterns and dysfunctional ways of coping that led to their offending behavior. This understanding can then be used to develop an understanding of their offense cycle, develop strategies to recognize when they are at risk, and learn to use these strategies outside of the treatment setting. Successful progress through the program is indicative of a resident's exposure to treatment concepts, developing knowledge of their unique risk factors, and ability to use this knowledge to manage their emotions and behavior. The goal of the program is to foster the self-knowledge and coping skills necessary for integration back into the community. When assessing the degree to which a resident has ameliorated his/her risk, I consider a number of factors. These factors include, for instance, acknowledgment of sexual deviancy issues, participation in treatment, knowledge of offense cycle, articulation of adaptive coping strategies, and behavior outside of structured treatment.

SCC Record Review

Mr. Meirhofer's records for this review period were few in number and provided little in the way of clinically relevant information. The reason for this is that he refused treatment and did not engage in any meaningful dialogue with SCC clinical staff. Mr. Meirhofer's records did not indicate that he engaged in any psychotherapeutic treatment during this review period. His records did not indicate that he attended any sex offender treatment groups. His records did not indicate that he met with any SCC therapists for individual therapy sessions. His records did not indicate that he completed any of the written treatment assignments that are required to advance through the phases of the program.[1] His records did not indicate that he worked with therapists on developing intervention strategies for his risk factors. His records did not indicate that he practiced applying interventions to manage the types of thinking, attitudes, and emotional states that were related to his sexual offending behavior. His records did not indicate that he demonstrated any capacity to work collaboratively with therapists on managing his sexual thoughts and urges. His records did not indicate that he conveyed insight into the effects that his sexual offenses had on his victims. His records did not indicate that he participated in any substance abuse programming, which is important in Mr. Meirhofer's case since he was a problematic drinker and drug user and his offenses were related to substance use. In general, Mr. Meirhofer's records did not indicate that he participated in the types of activities that might affect a change in his mental condition and decrease his risk for sexual re-offense.

Mr. Meirhofer's residential progress notes indicated that his residential functioning was good during this review period. He got along well with residential staff and other SCC residents. He tended to be polite and respectful toward residential staff. He socialized with other SCC residents on his unit. He maintained good hygiene and kept his room in accordance with SCC standards of cleanliness.

Mr. Meirhofer maintained a job in the Dining Facility as a Food Service Worker. His job performance evaluations indicated that he did well in all domains of his job (Resident Job Performance Reports, 5-26-09 & 11-17-09). The only exception was a problem he had following a supervisory directive about serving the end pieces of a cake. He refused to serve the pieces, became upset, and slammed down a pan on the counter (Resident Job Performance Report, 10-08-09). It was noted that if he continued to behave in this manner, he would be terminated from his job.

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[1] These assignments include, for instance, a written sexual autobiography, offense cycle chains, and a relapse prevention plan. These are foundational assignments that help SCC residents understand the types of attitudes, thoughts, emotional states, and situations that were related to their sexual offending behavior.

Mr. Meirhofer generally followed SCC rules and policies. However, there were a few exceptions. One of these exceptions was violating a no-contact condition with another resident. In the past, Mr. Meirhofer has been suspected of having a sexual interest in a fairly young, developmentally disabled SCC resident. For this reason, during this review period, a condition was placed on Mr. Meirhofer to not make contact with this resident. A few months ago, Mr. Meirhofer violated his no-contact condition (Behavior Management Report, 2-3-10). During this review period, Mr. Meirhofer was also restricted from having room visits with another SCC resident for similar reasons of suspected inappropriate sexual relations (Progress Note, 3-4-10).

In addition to these behavioral problems, Mr. Meirhofer had some difficulty emotionally accepting a decision to move his room closer to the residential staff desk. The move occurred around April of 2009, just prior to the beginning of this annual review period. The following behavior observations were made shortly after the move:

- Resident Meirhofer was very upset about his room exchange; he did not greet me for four days (Progress Note, 4-16-09).
- On the above date and time, I observed resident Meirhofer rip a piece of paper off of the bulletin board and ball it up and take it into his room. I did not say anything to resident Meirhofer because I knew that he was angry with staff because he had to move to a room close to the staff desk today (Progress Note, 5-6-09).
- Mr. Meirhofer and I used to have a rapport that was social and agreeable to what was going on in the unit as far as any changes. Since Mr. Meirhofer was placed in another room on this unit, he has expressed to me that I had something to do with him being moved and he let me know he was not happy about the move. Mr. Meirhofer has displayed behavior that is out of his usual behavior doing things such as tearing down memos placed on the memo board and mumbling things to staff as he passes by the desk. He is not receptive to staff talking to him and will not even look at staff as he is passing the desk area. I used to think he was the happiest resident on Dogwood unit. Now he appears to be mad every day. I will continue to monitor his behavior and document as seen (Progress Note, 5-25-09).

Mr. Meirhofer's medical records indicate that he underwent an interval history and physical examination in February 2010. He is generally in good health and without any chronic, debilitating medical conditions. His major medical issues include a history of myocardial infarction, high cholesterol, and a tobacco use disorder. His cardiovascular issues are being monitored and treated here at the SCC.

Clinical Interview

Mr. Meirhofer's clinical interview included a mental status examination, assessment of his psychosexual functioning, review of his offense history, and evaluation of his perspective on sex offender treatment.

Mental Status Examination

Mr. Meirhofer is a 57-year-old Caucasian man whose physical appearance is consistent with his chronological age. He was dressed appropriately for the interview. His hygiene appeared adequate. He cooperated with the interview process. I had doubts about the veracity of his self-report given that he provided information that was inconsistent with his record of sexual offenses. He reported that over the past few weeks he has been "in a good mood." His affect was euthymic and normal in range and intensity. His speech was spontaneous, fluent, and grammatical. He was oriented to person, place, time, and situation. His thought processes were logical, coherent, and goal-directed. He denied a history of experiencing perceptual abnormalities. His thought content did not reveal evidence of a thought disorder. He said that he has never experienced suicidal thoughts. He denied thoughts of harming others. His attention and concentration were

within normal limits. His short-term and long-term memory was grossly intact. His intelligence appeared to be in the average range.

Daily Life at the SCC

Mr. Meirhofer's main structured activity at the SCC is his job in the kitchen. He reported that he works 20 hours per week as a cook and does "very well at it." He said that he works two 8-hour days and one 4-hour day per week. He said that he likes his work supervisors and the flexibility he is granted in deciding how to cook the meals. He said that he gets along with all of his co-workers. Similarly, he said that he gets along well with his supervisors. He reported one conflict with his supervisor, which was the incident that involved refusing to serve the end pieces of the cake. He said that he refused because he was afraid of how his peers would respond to serving the end pieces.

Otherwise, Mr. Meirhofer reportedly has considerable free time during the week since he is not participating in treatment. He said that he spends his time watching television and socializing with other residents. He goes to the Recreation Center about two to three times per week. At the Recreation Center, he lifts weights and plays pool. He said that during football season he likes watching football. In the past, he has enjoyed writing but has not written since last July when his computer was confiscated.

Mr. Meirhofer said that he tries to walk about 30 minutes per day to maintain his health. He had a heart attack two years ago and is being treated pharmacologically for high cholesterol. In addition to walking, he maintains his cardiovascular health by limiting the amount of fatty foods in his diet and by avoiding salty foods. He reportedly seeks medical care when necessary. He said that he has not received any psychiatric treatment or consultation in the past year.

Acknowledgment of Sexual Deviance

Mr. Meirhofer failed to acknowledge that he has a problem of sexual deviance. He does not believe that he has any mental abnormality. When he was asked about how he made sense of the fact that he was civilly committed to the SCC, he answered, "I don't really." Although he denied having a problem of sexual deviance, he acknowledged that he had a problem with controlling his sexual behavior when he was last in the community and addicted to methamphetamine. He said, "When I was on drugs, I had a problem with all aspects of my life, and that was part of it, yes." He views his history of sexual offending as something of the past, a "horrible" mistake, but no longer a concern. He does not think he would be at any risk to sexually re-offend if he were released to the community.

Mr. Meirhofer acknowledged that he historically experienced a sexual attraction to boys around age 15 or 16, but he denied ever experiencing an attraction to prepubescent boys. Beginning in 1980 or 1981, he had sexual contacts with boys under the age of 16 years. He estimated that he had sexual relations with about 10 different boys with the youngest being 15 years old. He denied having any sexual relations with boys under the age of 15 years.

Offense History

Mr. Meirhofer's record of sexual offending was reviewed with him to obtain his version and perspective on his offenses.

<u>Offense 1(Convicted for this offense)</u>
Official Version
Rape in the 1st degree and Kidnapping 2nd degree. On 07.17.87, a 13-year-old boy from Blaine, Washington observed a man, who he later identified as Mr. Meirhofer (age 34), drive by his home while he was in the front yard. Sometime during the early morning hours of July 18th, the boy was awakened by

Mr. Meirhofer, who was wearing a t-shirt that he had fashioned into a mask. He warned the boy to be quiet as he stuffed a piece of cloth into his mouth and secured it by wrapping tape around the boy's head several times. Mr. Meirhofer put a hunting knife to the boy's throat, warning him again not to cry out. He pulled the boy out of his bed, threw him over his shoulder, carried him out of the house, placed him into his car, and drove off. Eventually, he stopped the car and ordered the boy to undress. Mr. Meirhofer also undressed and fondled the boy's genitals, fellated him, and anally raped him. After the assault, they both dressed. Mr. Meirhofer drove the car around for a while longer, keeping the boy with him until the late afternoon. Before releasing the boy, Mr. Meirhofer warned him not to tell anyone and threatened to burn down the boy's home if he did.

When the victim's parents discovered in their son missing they attempted to call the police and discovered that their telephone line had been cut. Both the boy and his stepfather (who happened to see Mr. Meirhofer dropping the boy off) were able to record a partial license plate number from the car. Both were able to identify Mr. Meirhofer from a police lineup. While investigating this offense, police learned that Mr. Meirhofer had been renting a room from an associate.

Among Mr. Meirhofer's possessions, the police found several items belonging to his victim's family, as well as items belonging to victims of other burglaries and assaults. On 10.23.87, Mr. Meirhofer was arrested. Prior to his arrest, he led the police through Bellingham on a high-speed chase that ended in a car crash. After the crash, Mr. Meirhofer resisted police orders to exit his vehicle and had to be physically removed by police. Even then, Mr. Meirhofer offered a false identity. He was subsequently charged and convicted of Eluding a Pursuing Police Vehicle.

Mr. Meirhofer acknowledged abducting and raping his victim. His account of the crime was essentially the same as the boy's with one notable exception. While Mr. Meirhofer acknowledged having fellated the boy, he denied sodomizing him because of his inability to maintain an erection due to the amount of methamphetamine he had taken over the preceding day of the offense. Instead he had used the end of a small baton. "Like policemen have. It only went in a little bit, but it was penetration." (Per his 2007 admission during AR 2007 interview). He denied having any other sexual contact with other minors. Mr. Meirhofer denied having felt any sexual attraction to the boy prior to the offense, but thought somehow he would feel aroused when he committed the assault. Nevertheless, he has told previous evaluators that he had subsequently fantasized about the rape. Mr. Meirhofer was sentenced to 99 months in prison.

Mr. Meirhofer's Version
Mr. Meirhofer acknowledged that the above account was an accurate depiction of this offense. Later in the interview, he said that he had seen the boy in his yard earlier that day. This was the first time he had seen the boy. It was after seeing the boy in the yard that he decided to kidnap and rape him. He said that he planned the offense for a few hours before committing it.

Offense 2 (Convicted for this offense)
Official Version
Burglary in the 1st degree, Assault in the 2nd degree. During the afternoon of 12.04.86, a 33 year-old woman (SH) was studying in the basement of her home when she heard someone enter into the main floor of her residence. As it was about the time the 13-year-old son (Matthew) of her housemate (MM) to come home, she assumed that it was him. Later, after she discovered that Mathew had not come home and that her keys were missing from the upstairs area, she suspected that the noise she had heard had been a burglar. In addition, her housemate was missing a jewelry box. A police report was filed with the Seattle police. Because the keys to the residence were missing, it was decided that Matthew would sleep upstairs with his mother, while SH slept on the main floor. At approximately 2:45 a.m. the answering machine, (which had an alarm feature that activated when the phone line was cut) awoke SH. Immediately after

that, she heard a key being inserted into the kitchen entrance of the residence. Investigating the sound SH saw a man, later identified as Mr. Meirhofer, attempting to open the door with her key. SH shouted at him hoping that he would retreat. Instead, he proceeded into the home and SH ran upstairs to warn the others. The two women and the boy took refuge in a room and used their body weight to block the door. Mr. Meirhofer had pulled on what appeared to be a stocking over his face and tried to force his way into the room. He warned them that he had a knife and a partner downstairs who had a gun. During the struggle Mr. Meirhofer's jacket became caught in the door-jam and he used his knife to cut himself free. Because the phone line had been cut from the outside of the house, the victims were unable to call for help. On his mother's instructions Matthew climbed out the window and ran to a neighbor's house for help. When the women told Mr. Meirhofer that Mathew had gone for help, he fled.

Mr. Meirhofer acknowledged his involvement in this offense but denied any sexual interest in Matthew. He explained that he had returned to the home because he hoped to find money in the wallets of the house's occupants. The police noted that Matthew would have normally been home alone during the time of the initial break-in.

During investigation of this incident the police learned that on 11.25.86, the home of a friend of MM's had been burglarized. The victim of that burglary (a single mother with two children) discovered that her lingerie had been gone through and had apparently been used for masturbation by the intruder. In addition, other pieces of lingerie and an address book had been taken from the residence. Though the book contained the names and phone numbers of several women, MM's address was only one of three listed.

Mr. Meirhofer's Version
Mr. Meirhofer admitted to the official version of this offense. He said that his motivation for entering the residence was to get money for methamphetamine. He denied that he had any sexual interest in the 13-year-old boy who was in the residence at the time of the burglary.

Offense 3 (Suspect in this offense)
Official Version
On 12.15.86 at 5:30 a.m., a 13 year-old female (JH) was sitting alone in the living room of her home in North Seattle. Her mother had left for work only a few minutes before. She observed a man come into her home carrying a knife and wearing a stocking over his head. She pretended to be asleep, hoping that the intruder would take what he wanted and leave without disturbing her. Instead, the man put his hand over her mouth and pressed a knife to her throat with enough force to leave a mark. After threatening her to remain silent, the intruder directed her to choose whether she wanted to go to her mother's bedroom or her own room where he intended to teach her to "suck cock." The intruder proceeded to tie her wrists together with telephone cord tightly enough to cut into her skin. He directed her to close her eyes and warned her to "stop looking at me or else I'll have to kill you." He then pulled her shirt over her face to serve as a blindfold. The intruder took JH into her bedroom where he raped her vaginally. When she initially refused his directives, he began to yell, "Fuck me" and "Bitch" as he repeatedly struck her in the head. Afterwards, he forced her to fellate him, giving specific directions as to how to move her tongue and insisting that she swallow his semen after he had ejaculated. He then removed his penis from her mouth and rubbed it on her face. Finally, he forced her down to the floor, onto her hands and knees, and anally raped her. The intruder took his victim back into the living room where he tied her into a chair and left the residence. JH was able to untie herself and tried to call the police but the telephone line had been cut. She then ran to her aunt and uncle s nearby home and summoned help.

Mr. Meirhofer's Version
Mr. Meirhofer denied that he had any involvement in this offense.

Offense 4 (Suspect in this offense)

Official Version

On 12.15.86, about one hour after the offense described above, against the 13-year-old female (JH), an unidentified man entered the home of a 13-year-old boy (RB) who also lived in North Seattle. RB's mother had just left for work, leaving RB and his 11-year-old sister, SB, alone in the apartment. At the time the man entered the apartment, RB had just finished dressing after taking a shower and SB was still asleep and her room. RB reported first noticing the intruder by foul odor in the living room. Then he saw the man who was wearing a stocking over his face. The man produced a knife and warned the boy that if he cooperated with him, he would not get hurt. He then took the boy back to his bedroom where he taped his hands behind his back and covered the boy's eyes with tape. After laying the boy down on his bed the intruder proceeded to undress him. The man fondled RB's genitals for a time and then rubbed something that felt like petroleum jelly on his anus before anally raping him. Reportedly, the man talked to the boy during the assault instructing him how to move around (e.g. how to position himself, and stroke his assailant's penis) and to apparently try to arouse the boy (telling him to imagine an attractive woman). He asked about RB's sister in the other room, though he was mistaken about her gender. He asked, 'What time does your brother get up?" After finishing the rape the perpetrator collected some personal things belonging of RB and placed them into a bag that he had brought with him. At that time, SB opened the door and looked into the room. The assailant reportedly stated, "Get out. You're next." The girl ran for help and the intruder fled. When police investigated they found that the phone had been disconnected. Police records do not include a description of the subject in this case, though a composition drawing was made from SB's description (when she had looked into the room the perpetrator had his mask pulled up). She had described someone similar to the composite developed by SH.

Mr. Meirhofer's Version

Mr. Meirhofer said that he was charged with this offense but denied any involvement. He said that there was DNA evidence to indicate that he was not the perpetrator.

Offense 5 (Suspect in this offense)

Official Version

On 4.11.86, JA (age 13) was sitting alone in the living room of his home. His mother had just left the house for work. A man wearing a ski mask walked in through the front door and grabbed the boy by the wrist. A struggle ensued and JA ended up on the floor. The man warned him that it would be easier and faster for him if he did not resist. The boy asked him what he was going to do, to which the man replied, "I'm going to suck your dick." He proceeded to take a piece of rope and tied the boy's wrists. Afterwards when the boy stopped struggling, the man removed the rope and took him to a bedroom. The man directed the boy to undress and he undressed as well. He directed the boy to get onto the bed where he fellated the boy. Following this, he lay on the bed and directed JA to sit on his penis. The boy complied and the man raped him. The man then directed the boy to lie on his stomach so he could anally rape him a second time. After doing this, the man lay on his stomach and directed JA to anally penetrate him, which he did. The man then allowed JA to dress and he also dressed, changing into clothes he had brought with him in a carry-bag. At some point during the assault, the man took off the ski mask and the boy recognized him as the person he had spoken to the previous evening while playing video games at a nearby convenience store. The man had walked JA home before telling him good night and going on his way. No suspect in the case was identified at the time. However, when Mr. Meirhofer became a suspect in 1987, police investigating another matter found him in possession of JA's student identification card. Mr. Meirhofer fit the general description JA had offered the police. In November of 1987 (some 18 months after the offense), JA attended a lineup that included Mr. Meirhofer, but was unable to make a positive identification.

Mr. Meirhofer's Version
Mr. Meirhofer admitted that he went to this boy's house and had sexual relations with the boy. However, Mr. Meirhofer provided a quite different version than the victim. Mr. Meirhofer depicted the boy as a willing participant. He said that he had met the boy the night before, and the boy had invited him to come over the next morning after his mother left for work. He said that he had told the boy he wanted to "suck his dick." While describing the offense, Mr. Meirhofer said, "We undressed at the same time ... he was eager and willing, had a full erection upon getting disrobed." He denied forcing the boy to sit on his penis and said "I sat on his penis." He said that he boy lied about what happened. He said that the boy might have been mad at him for stealing his bicycle the night before, and this might have motivated him to lie. In general, Mr. Meirhofer provided a description of the offense that conflicted with the record.

Offense 6 (Suspect in this offense)
Official Version
On 06.03.86 at approximately 8:30 a.m., JL (age 9) was waiting at a school bus stop in North Seattle. An unknown man drove up to him and asked the boy to help him with some kind of car problem. JL agreed and climbed into the front seat behind the steering wheel as directed. The man pushed the boy to the passenger s side and drove away. He pushed the boy down on the seat and directed him to cover himself with a shirt and blanket. After they had driven some distance, the attacker directed JL to undress. At one point he showed the boy that he was armed with a pistol. The man stopped the car in a field that was surrounded by trees. The man directed JL onto his knees and after lubricating his anus, raped him. He then performed fellatio on the boy. When he had completed his assault, the man directed the boy to dress himself and they left the area. He returned to the original North Seattle neighborhood and freed the boy. Because of the similarity between this offense and other offenses for which Mr. Meirhofer had been charged, he became a suspect in this case. JL was unwilling to attend a lineup, which included Mr. Meirhofer, to see if he could identify a suspect.

Mr. Meirhofer's Version
Mr. Meirhofer denied any involvement in this offense.

Offense 7 (Suspect in this offense)
Official Version
On 9.10.87, at approximately 7:50 a.m., ZH (age 10) was playing with schoolmates at the Stanwood Primary School when a strange man approached them. The man asked ZH's schoolmates to go into the school building and get some information about the school's teachers for him. As soon as they left, the man produced a small handgun and directed ZH into a waiting car. The man directed the boy to keep his head down so he would not be seen, and to undress as they drove along. They stopped in a secluded field where the boy was instructed to stand outside the car. The man rubbed petroleum jelly, suntan lotion, baby oil, and baby powder on the boy before anally raping him. In addition, the man performed fellatio on the boy. During the course of the assault, the man inserted flesh-colored balloons into the boy rectum and inflated them with some device, and by blowing into them orally. Afterward, the man directed the boy to dress and returned him to the neighborhood where he had found him. On 10.28.87, ZH made a positive identification of Mr. Meirhofer as his attacker from a police lineup. Because the boy had been hypnotized earlier in an attempt to help them remember more details about his attacker s vehicle ZH's identification was not allowed as evidence in any criminal charges against Mr. Meirhofer.

Mr. Meirhofer's Version
Mr. Meirhofer denied any involvement in this offense.

Description of Offense Motivations

Mr. Meirhofer said that his offenses were partly motivated by a wish for "sexual gratification." He explained that at the time he committed the offenses, he was addicted to methamphetamine and had poor hygiene. He described himself as dirty and unattractive, and commented, "I didn't think there was any other way I could have sex with anyone." Prior to the offenses, he said that his "ex-lover had thrown [him] out" and he was in a "drug stupor." He thought that somehow the people whom he and his lover knew would blame his lover for making him commit the offenses. He believed that they "would think it was his fault for the way he treated" him. He said that he felt "hurt and abandoned" by his lover, and "it seemed like if I committed this crime and got caught, our mutual friends would reject him, thinking it was his fault." Mr. Meirhofer added that using methamphetamine "made me do things that I wouldn't normally do," like "acting in a violent manner" and "stealing things." He acknowledged that at the time of his offenses, he was in a state of mind where he did not care about other people or about putting himself at risk.

Mr. Meirhofer did not communicate insight into the types of attitudes that led him to sexually offend. He denied that he was sexually preoccupied at the time of his offenses. However, he said that he was preoccupied with where he would get his next fix of methamphetamine.

Sex Offender Treatment

Mr. Meirhofer said that he is not participating in treatment because he does not believe he needs treatment. He further said that he does not believe that he fits "the criteria of this bogus law" and does not believe he has a "mental abnormality." When asked about his understanding of the term mental abnormality, he said that he thinks that having a mental abnormality means not having the "mental capacity to determine right from wrong."

When Mr. Meirhofer was asked if there were anything that could motivate him to participate in treatment, he said that there was not and he was "not going to play the treatment game." He said that he knows that treatment "is all bogus." When I confronted him with the fact that it might be hard to know it was bogus since he had not actually participated, he said, "I don't need to have done it to know that it is a load of crap." He said that he could not think of any potential benefits from participating.

Mr. Meirhofer confirmed that he had not done any work with therapists on understanding his risk factors for sexual re-offense. He said that he had not worked with any therapists on developing interventions to manage his risk factors. He confirmed that he has not completed any of the major requirements of the SCC treatment program, such as a sexual autobiography, sexual offense cycle, or relapse prevention plan.

Substance Abuse Issues

Mr. Meirhofer said that while he was in the community he had an alcohol abuse problem and a methamphetamine abuse problem. Until 1982, when he received his second Driving Under the Influence (DUI) charge, he drank regularly to intoxication. He first noticed a loss of control over his alcohol intake when he was 25 years old. As his drinking progressed, he could reportedly drink up to a fifth of liquor in a few hours. He said that prior to quitting drinking in 1982 he experienced blackouts about every other time he drank. He said that in addition to creating legal problems for him, due to driving under the influence, his drinking caused him relationship problems as well.

Mr. Meirhofer was reportedly clean for a few years from 1982 to 1984 after his second DUI charge. During part of this time, he participated in court-mandated treatment for alcoholism. In 1984, he started using methamphetamine and quickly became addicted to the drug. He denied resuming alcohol use after starting to use methamphetamine. Up until his arrest in 1987, his methamphetamine addiction progressed and severely impaired his functioning. His methamphetamine use contributed to the loss of his relationship with

his long-time lover. He said that his hygiene became quite poor, such that he was "dirty and disgusting." He resorted to stealing to support his methamphetamine habit. He reportedly stayed awake high on methamphetamine for as long as a week at a time and experienced hallucinations. Importantly, he said that he eventually had "no inhibitions about anything," and as mentioned, he reportedly committed his sexual offenses while under the influence of methamphetamine.

Mr. Meirhofer reportedly has not participated in any substance abuse treatment work at the SCC. He said that he would not consider participating in substance abuse treatment because he is "not involved in any substances" and has "put all that behind [him]." I pointed out to him that he used substances a few years ago. He acknowledged that he had used. When confronted with the fact that he had said that using was a risk factor for him and he chose to use anyway, he said that when he used it "didn't seem to matter at the time" since he does not expect to "go anywhere" and considers the SCC "pretty much [his] home."

Sexual Functioning

Mr. Meirhofer characterized his sex drive as relatively low. He reportedly tries to masturbate "once every couple of weeks, maybe." He said that usually he cannot reach orgasm because of his difficulty maintaining an erection. He said that there were no times in the past year when he masturbated more than once in a day. He denied masturbating to relieve him from painful emotional states. He said that when he does masturbate, the content of his masturbation fantasy involves images of his past relationships with men, ages 25 to 35. He denied masturbating to thoughts of underage boys in the past year. He denied ever experiencing sexual thoughts about prepubescent boys and said that he had never had any sexual experiences with a boy who did not have secondary sex characteristics. He denied experiencing any sexually deviant fantasies in the past year. He denied becoming preoccupied with sexual thoughts during this past year. He reported that he did not have any problems managing his sex drive during the past year.

Mr. Meirhofer was asked about the conditions that were put in place for him avoid contact with another resident with whom he was suspected to be sexually interested. This other resident is a developmentally disabled man, who is 31 years younger than Mr. Franklin, and part of the Special Needs treatment track at the SCC. Mr. Meirhofer denied that there was any sexual interest from his side. He said that the conditions "came out of the blue" and did not make sense to him or the other resident. He said that "for some reason, he seems to like me, and apparently someone doesn't like that."

Mr. Meirhofer was asked if had had ever tried to initiate a sexual relationship with another SCC resident. He said that he had initiated one sexual relationship with a different Special needs track resident. Mr. Meirhofer defensively described him as a "high-end special needs" resident, meaning that he is not severely developmentally disabled.

Mental Disorders

Mr. Meirhofer suffers from a number of mental abnormalities that predispose him to sexually re-offend. He has a clear history of sexual attraction to teenage boys under the age of 16 years. In the interview with me, he estimated that since he reached the age of majority, he had sexual relations with about 10 boys under the age of 16 years. He admits to raping two boys who were 13 years old. Although he denied a sexual interest in prepubescent boys, he was a suspect in the rape of a 9-year-old boy and a 10-year-old boy. Thus, Mr. Meirhofer clearly has had a sexual attraction to minor-aged boys and repeatedly acted on this attraction by seducing and raping underage boys.

Mr. Meirhofer admits to aggressively kidnapping and raping one 13-year-old boy. He was convicted for this offense. He also admitted to the sexual abuse of another 13-year-old boy, but he claimed that the boy wanted the sex and denied using force. However, Mr. Meirhofer's account of the abuse is in stark contrast to the boy's account. The boys' account indicated that Mr. Meirhofer coerced, bound, and anally

raped him, and the rape was similar in a number of respects to the rape of the other 13-year-old boy. These offenses occurred about a year apart.

The victims' report about the rape offenses, which he admits to committing, involved significant threat, coercion, and anal rape. In one case, the victim reported that Mr. Meirhofer bound his wrists. Mr. Meirhofer was a suspect in a number of other cases that involved forceful rape. He denies responsibility for these offenses. Therefore, his history of sexual offending indicates an abnormal sexual object choice of underage boys and some evidence of a paraphilic arousal to rape. Currently, he denies deviant sexual fantasies and only reports a sexual interest in normal sex with adult men.

Mr. Meirhofer has a clear history of serious alcohol abuse and methamphetamine abuse. In the interview with me, he described a pattern of substance abuse that substantially impaired his relationships with others, ability to work, and his judgment. While in the community, he was treated for substance abuse after his second DUI, but according to his records, he resumed using about a year after beginning court-ordered treatment. In the clinical interview with me, he indicated that he started using methamphetamine after undergoing alcohol treatment in 1982, but his records indicated that he actually began using methamphetamine at age 18, in 1971, and had an ongoing problem with methamphetamine use throughout his adult life in the community. He used drugs to lure underage boys into having sex with him, and he said that his methamphetamine use significantly lowered his inhibitions and played a role in his rape of underage boys. Thus, methamphetamine use was clearly a contributory factor to his sexual offending.

Mr. Meirhofer's behavioral history indicates significant antisocial personality traits. While in the community, he engaged in a pattern of unlawful behavior. He was irresponsible insofar as he did not maintain stable employment, had periods of homelessness, and for many years lived off the resources of his lover, who was many years older than him. His criminal history indicates some degree of impulsivity and aggressiveness, and the nature of his sex offenses indicate a disregard for the safety of others. His lack of respect for others' welfare was also evident in the fact that he lured teenage boys to have sex with him through providing them with methamphetamine. Moreover, his records indicated that for a period of time, he mainly supported himself financially by dealing methamphetamine. My review of his records did not reveal that he has expressed guilt and remorse for his sexual crimes. In the clinical interview with me, he discussed his sex crimes in a matter-of-fact manner. In describing one of his crimes, he justified and rationalized his behavior by describing the boy as sexually interested and aroused. In fact, he denied raping the boy and described him as a willing participant, who later lied about the nature of the sexual encounter to get back at him for stealing his bike. Not only did he show a lack of remorse but blamed the victim to some extent.

Mr. Meirhofer's dependent relationship with his older lover, coupled with his sense of abandonment and then reckless, impulsive behavior after feeling abandoned, suggest an element of borderline personality pathology.

Mr. Meirhofer's mental disorders were diagnosed based on the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (*DSM-IV-TR*). My DSM-IV-TR diagnoses include:

Axis I:	**Paraphilia, Not Otherwise Specified, Hebephilia** **Rule Out Pedophilia, Sexually Attracted to Males, Nonexclusive Type** **Paraphilia, Not Otherwise Specified, Nonconsent**
Axis II:	**Personality Disorder, Not Otherwise Specified, with Antisocial and Borderline Traits**

Mr. Meirhofer has a clear sexual attraction to pubescent boys who are underage and has acted on this attraction on numerous occasions. This is the rationale for the Hebephilia diagnosis.

Historically, Mr. Meirhofer has been diagnosed with Pedophilia. My opinion is that there is not sufficient evidence to indicate a clear pattern of sexual attraction to prepubescent boys. The main evidence, based on my review of his records, is the fact that he was the suspect in the rape of a number of prepubescent boys. However, he denies his involvement and denies ever experiencing a pattern of sexual attraction to prepubescent boys. Given that he was not convicted of these charges and denies an attraction to prepubescent boys, I do not think there is sufficient evidence to warrant a pedophilia diagnosis. Thus, I rendered a Rule Out Pedophilia diagnosis. A sexual history polygraph and plethysmograph testing may help clarify the full spectrum of his offense history and sexual arousal patterns. Although I do not think there is sufficient evidence to warrant the diagnosis at this time, I suspect that past evaluators were likely correct in their diagnostic opinion and that full disclosure of his history of sexual fantasy and sexual behavior with minor would reveal the presence of a pedophilic disorder.

Mr. Meirhofer fully admits to the kidnapping and rape of the 13-year-old boy in July of 1987. He also admits to the sexual offense against the 13-year-old boy in April of 1986. As described above, Mr. Meirhofer depicted the sexual offense against the April 1986 victim as without coercion and in stark contrast to the victim's report of being grabbed, bound, and anally raped. My assumption is that the victim's report about the nature of the assault is accurate. These two rapes were over a year apart. Moreover, in the time span between these two rapes, there were a number of similar rapes of boys, and a girl, with a similar offense pattern. Mr. Meirhofer was a suspect in these rape cases. Thus, I believe there is a clear enough pattern of rape behavior to indicate a rape paraphilia (or Paraphilia, Not Otherwise Specified, Nonconsent). A sexual history polygraph and plethysmograph assessment may help to better clarify the nature of his history of paraphilic rape and his current pattern of arousal to coercive sex with underage persons.

Mr. Meirhofer's history of behavior in the community suggests a fairly classic presentation of Antisocial Personality Disorder. The only reason that I did not render a full diagnosis of Antisocial Personality Disorder is that there is not unequivocal evidence of a Conduct Disorder prior to age 15 years.[2] The fact of the matter is that he presents with the symptoms of Antisocial Personality Disorder as an adult, so functionally I think that Antisocial Personality Disorder is the most appropriate clinical conceptualization of his personality pathology. However, in keeping with the DSM-IV-TR diagnostic guidelines, I did not render a diagnosis of Antisocial Personality Disorder but rather a Personality Disorder, Not Otherwise Specified diagnosis.

Sexual Violence Risk Assessment

Mr. Meirhofer's risk for sexual re-offense was evaluated by examining his score on an actuarial risk assessment instrument (Static-99R) and considering his dynamic risk factors (changeable risk factors).

Actuarial Risk Assessment: Static-99R

The Static-99R is a revised version of the Static-99. The major change in the Static-99R is that it better accounts for the risk factor of *age at release*. Additionally, the Static-99R provides new recidivism estimates based on different sample characteristics. Mr. Meirhofer's score was compared to the *Preselected for High-Risk/High Needs* sample. Sex offenders in this sample were comparable to Mr.

[2] I suspect that there is simply an absence of information about his behavioral problems prior to age 15. It seems unlikely, although possible, that his behavioral problems suddenly emerged around age 15 years when he began to have a clear pattern of illegal arrest and criminal conviction.

Meirhofer in that they were referred for services at forensic psychiatric facilities (like the Special Commitment Center) and to intensive treatment programs reserved for the highest risk offenders. Mr. Meirhofer scored a 4 on the Static-99R. Mr. Meirhofer's score of a 4 is associated with a 5-year sexual recidivism estimate of about 20% and a 10-year sexual recidivism estimate of about 30%.

Dynamic Risk Factors

The main objective of sex offender treatment at the SCC is to address the psychological factors related to an offender's risk for sexual re-offense and to modify these through treatment. These factors include, for instance, beliefs and attitudes related to sexual offending, deficits in impulse control, and difficulties forming meaningful, mature relationships with other adults. The following dynamic risk factors are based on Mr. Meirhofer's self-report, clinical inferences made about Mr. Meirhofer's self-report, and information from his records[3]. This set of dynamic risk factors is open to revision and not necessarily complete.

Sexual Self-Regulation

- Deviant Sexual Interests – Deviant sexual interests refer to arousal to abnormal sexual objects and behaviors (e.g., children, non-consenting partners, cross-dressing). Mr. Meirhofer has a history of sexual attraction to teenage boys under the age of 16 years and a history of sexual interest in raping young teenage boys.
- Sexualized Coping – Sexualized coping refers to engaging in sexual thoughts or in sexual behavior to cope with negative emotional states. These thoughts and behaviors may be either normal or deviant. Sexualized coping also refers to behaving in a sexually deviant manner while under the influence of substances and/or when experiencing a serious mental illness. Mr. Meirhofer has a history of raping boys while under the influence of methamphetamine.

Attitudes Supportive of Sexual Assault

- Sexual Entitlement – Sexual entitlement refers to a belief that sex is a basic need that must be met. Sexual entitlement is reflected in a belief that one is entitled to sex, difficulties going without sex, and problems regulating sex drive. Mr. Meirhofer felt entitled to rape teenage boys when he could not find a way to seduce them because he was disheveled and strung out on methamphetamine.

Intimacy Deficits

- Social rejection/loneliness – Social rejection/loneliness refers to deficits in forming close relationships with other adults and the corresponding feelings of social rejection and loneliness associated with this deficit. These individuals often feel lonely and rejected, have few people to provide them with social support, and experience difficulty in initiating and maintaining appropriate adult relationships. Mr. Meirhofer said that he sexually offended at a time when he felt rejected by his ex-lover and had problems making meaningful connections with other people.
- Lack of Concern for Others – Lack of concern for others refers to a trait of self-centeredness and deficits in considering other people's feelings. This lack of concern may be expressed, for instance, in callous behavior, a lack of remorse for harming others, and an instrumental use of other people (i.e., valuing them primarily in terms of the degree to which they advance self-centered interests). Mr. Meirhofer used drugs to lure underage teenage boys into having sex with him. In the clinical interview with me, he acknowledged that at the time he committed his offenses he was in a state of mind such that he did not care about whether he harmed other people or put himself at risk.

[3] The following set of risks factors, and risk factor definitions, were derived primarily from the Stable-2000, which is a structured method for assessing dynamic risk for sexual re-offense.

General Self-regulation

- Impulsive Acts – Impulsive acts refers to reckless, dangerous behavior that has a high likelihood of leading to negative consequences. Mr. Meirhofer's behavior in the community was characterized by a fair degree of impulsivity and recklessness. He lived a drug addicted lifestyle that included drug dealing, seducing underage boys, burglarizing homes, homelessness, and some extreme behaviors like trying to elude the police in a high-speed chase.

Other Risk Factors

- Cooperation with Supervision – Cooperation with supervision refers to the degree to which an offender complies with supervisory restrictions and works in conjunction with therapists and other persons in position of authority. To date, Mr. Meirhofer has refused sex offender treatment and refused to work cooperatively with therapists on learning risk management techniques that would help him safely transition to a less restrictive alternative placement.
- Social Influences – Social influences refer to a person's social network of individuals who are not paid to be part of their life (e.g., therapists, community corrections officers). To my knowledge, Mr. Meirhofer has not established a network of pro-social, positive influences either here at the SCC or in the community. While he was in the community, he lived an antisocial lifestyle and associated with drug dealing and drug using individuals.
- Self-assessment of Risk – Self-assessment of risk refers to the degree to which risk for sexual re-offense is perceived by the offender as a real possibility. This is an important risk factor since individuals who view themselves as having little to no risk for sexual re-offense may not take the necessary precautions (e.g., practicing interventions, staying away from places with potential victims) to avoid sexual re-offense. In the clinical interview with me, Mr. Meirhofer did not consider himself as at risk to commit another sexual offense and characterized his sexual deviance as something of the past that is no longer a concern.

Readiness for Conditional Release to a Less Restrictive Alternative

Mr. Meirhofer did not participate in any sex offender treatment during this review period. In the clinical interview, he dismissed the possibility that he would be at any risk to sexually re-offend. He does not view himself as a man with serious psychological problems who needs treatment. Rather, he views himself as a man who made some mistakes and who has been wrongly committed to the SCC. Although he has not participated in the SCC treatment program, he considers it "bogus" and sees no way in which it might benefit him. He has not completed any of the major treatment work required of the SCC program, such as a sexual autobiography, offense cycle, or relapse prevention plan. He attributes his sexual offenses to drug use rather than to a sexually deviant interest in underage boys, even though he admits to having sex with about 10 underage boys. He has little insight into the factors that contributed to his sexual offending and has made no effort in treatment to try to develop such insight or to develop interventions to manage his risk factors. Thus, there is no indication that he has made any significant progress toward developing the skills that would help him manage himself safely in the community under less restrictive conditions or succeed in working cooperatively with a community sex offender treatment provider.

Mr. Meirhofer was not entirely open and honest with me in the clinical interview. In the interview, he lied about his history of methamphetamine use. His records clearly indicate that he had a history of use long before 1984. Moreover, Mr. Meirhofer's depiction of the sexual abuse of the 13-year-old boy as consensual was in stark contrast to the boy's report, which was that Mr. Meirhofer grabbed him, bound him, and anally raped him after breaking into the boy's home while wearing a ski mask. Mr. Meirhofer's

description of the offense suggested serious minimization, distortion, and denial. His lack of honesty about issues such these, and his general failure to accept responsibility for his actions, makes it difficult to have confidence in his self-report and raises questions about the actual extent of his history of sexual offending. To date, he has not done the type of treatment work that would make possible a more honest disclosure about his offense history. Honestly disclosing his offense history is important in terms of formulating an accurate assessment of his risk factors for sexual re-offense. It is also important in terms of getting a fuller appreciation of his baseline level of risk. Finally, open and honest disclosure is important in terms of assessing his current degree of paraphilic interest. The fact that he was dishonest about his drug use and his offense history raises doubts about whether his report that he has not recently fantasized about deviant sex is truthful. Open and honest communication is a foundational expectation for working with a community sex offender treatment provider on collaborative risk management. Effective risk management cannot take place in a context of evasion and dishonesty. Mr. Meirfhofer's readiness for a less restrictive alternative placement will depend on him getting more honest about his past and openly disclosing his current sexual thoughts, interests, and behaviors.

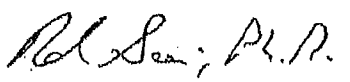
My opinion is that there has not been any observable change in Mr. Meirhofer's mental condition during this review period. He has not participated in any treatment to mitigate his risk for sexual re-offense. He has not so changed that he is ready for a less restrictive alternative to total confinement.

Forensic Conclusions

Mr. Meirhofer has been found to meet the criteria of the RCW 71.09.020 as a Sexually Violent Predator, and was committed to the Special Commitment Center on May 22, 2000. Mr. Meirhofer was committed to the SCC because it was determined that he possessed mental abnormalities and/or a personality disorder which rendered him likely to engage in acts of sexual violence if not confined in a secure facility. His civil commitment, according to 71.09.060, is to continue under the care of the Department of Social and Health Services to ensure care, control and treatment until his condition has changed such that he no longer meets the definition of sexually violent predator or conditional release to a less restrictive alternative, as set forth in RCW 71.09.092, is determined to be in Mr. Meirhofer's best interest and conditions can be imposed that would adequately protect the community.

It is my professional opinion that Mr. Meirhofer appears to continue to meet the definition of a sexually violent predator. Mr. Meirhofer's present mental condition seriously impairs his ability to control his sexually violent behavior. Secondly, it is my professional opinion that Mr. Meirhofer's condition has not so changed such that conditions can be imposed that would adequately protect the community, and a less restrictive alternative would not, at the present time, be in his best interest. I do not recommend that the court consider a less restrictive placement for him at this time.

Respectfully submitted,



Rob Saari, Ph.D.
Washington State Licensed Psychologist
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Special Commitment Center

Appendix A: Psychosocial History Information

The following psychosocial history information was extracted verbatim from the Annual Review, dated July 9, 2009, authored by James Manley, Ph.D.

Social History

Mr. Meirhofer is the third of five siblings born to Clifford and Eleanor Meirhofer. As a boy, he attended Church Sunday School and a Christian Boy's Club. He denied alcohol abuse by his parents during their time together. In 1962, his parents divorced due to a "personality conflict." Mr. Meirhofer's father soon remarried a younger woman. Then, his father owned a Case Farm Machinery shop in Manhattan, Montana. Mr. Meirhofer's mother has been described in documents as "domineering."

Apparently, Mrs. Meirhofer did not accept the divorce well and blamed her son's adolescent behavior problems on his father's reported lack of attention. She described her son as "cheerful, good hearted, helpful, good natured, and cooperative but acknowledged his behavior had begun to deteriorate around age 14. An investigation officer for the Mr. Meirhofer's 1969 Burglary offense indicated that it appeared the mother was unaware of much of Mr. Meirhofer's problematic behavior and interactions with the police.

It is noted that Mr. Meirhofer's older brother, David, was arrested in connection with the murder of a number of people including three children in Montana during the period between 1967 and 1973. He confessed to four murders shortly before committing suicide in his jail cell. While not connected with the murders, Mr. Meirhofer has shown interest about his brother's offenses and had visited some of the murder sites.

Educational History

He described himself as an average student during elementary school and noted that he got along well with almost everybody. He denied getting into trouble at school or fighting with his peers. However, at the age of 15, he came to the attention of the juvenile authorities and spent most of the following six years either in a juvenile facility (Pine Hills School) or on the road, after escaping (twice).

Mr. Meirhofer reported completing his GED prior to being incarcerated. He has completed numerous college classes and reported receiving an Associate Degree in General Studies, with additional studies in the Arts and Sciences, from Edmonds Community College. Mr. Meirhofer also reported attaining a certificate in automated office/computer services.

While at the SCC, Mr. Meirhofer has participated in a number of college courses taught by Pierce Community College.

Vocational History

During his early adolescence, Mr. Meirhofer worked at odd jobs including delivering the daily newspaper and mowing lawns

During his residence at the Pine Hills School, Mr. Meirhofer worked on a harvest crew. His employer described him as "one of the best employees I have ever hired. He was willing to do any job that I asked of him. He did his work very well."

Historical documentation indicates Mr. Meirhofer had an extremely unstable lifestyle when not incarcerated. He was supported by his long-term lover Jim Raines, and by trafficking methamphetamine. At one point he rented a store to use as a front for selling drugs, but failed to pay the rent.

Mr. Meirhofer has consistently received positive work evaluations in various positions while at the SCC.

Substance Abuse History

Mr. Meirhofer has an extensive history of substance abuse. He began drinking alcohol as a young adolescent. While being incarcerated at the Pine Hills School curtailed his access to alcohol, he began drinking upon leaving the institution and experienced alcohol-related blackouts around age 21. He received two citations for Driving Under the Influence. After his second DUI, he was court-ordered to complete a two-year outpatient drug and alcohol treatment program. Reportedly, he was clean and sober for the first year, but returned to substance abuse prior to the end of the second year.

He began using marijuana and LSD at about age 21.

Mr. Meirhofer was first introduced to amphetamine when he was age 18, by Jim Raines. Eventually, other associates introduced him to methamphetamine and his use quickly escalated into a daily habit.

Mr. Meirhofer's ongoing drug and alcohol abuse caused conflicts between himself and Mr. Raines. Reportedly, his substance abuse led to their eventual break-up in 1984. Mr. Meirhofer then moved to Seattle and continued to use and sell methamphetamine. He had reported having a store he used as a front to sell methamphetamine for "about three years." Mr. Meirhofer indicated during those three years he steadily used methamphetamine. The first two years he had snorted the substance, and the last year he had injected it. Mr. Meirhofer indicated the longest he had stayed wake while on the drug was for about seven days. At that point he had been experiencing hallucinations and delusions.

Mr. Meirhofer also funded his drug usage via collecting social assistance, fencing burglarized items, and stealing car and home stereos.

Mr. Meirhofer has reported that at the time of his 1987 sexual offense he had been using methamphetamine for "three or four" days without sleep.

In 1994, Mr. Meirhofer completed a seven-week drug and alcohol treatment program while incarcerated with the Department of Corrections.

Sexual History

Mr. Meirhofer has reported having vague memories of engaging in sexual play with two older boys when he was about 10 years old. He said this consisted of the boys showing each other their genitals and engaging in fondling. At about age 12, he and a same aged neighbor boy engaged in mutual sexual activities. Also at age 12, he recalled kissing a girl. At about age 13 he began masturbating and indicated that during his youth and as a younger adult, he masturbated as frequently as 2 to 3 times daily, eventually decreasing to about once per week. He realized he was gay around age 13.

At age 16, Mr. Meirhofer ran away from reform school and was picked up by a man in his 20s. Mr. Meirhofer noted the man took him home and fellated him. At age 17, Mr. Meirhofer dated a girl and

kissed her. He reported he was not then, or has ever been, sexually aroused by females. Related to this, Mr. Meirhofer has denied perpetrating the crime against the 13 year-old-girl (JH, see page 7). He claimed DNA evidence had cleared him of the offense but that evidence had been ignored. Mr. Meirhofer reported that over the course of his life he had "maybe 10" male sexual partners, which included two prostitutes.

His longest relationship, with Jim Raines, lasted 13 years. In 1971, Mr. Meirhofer met (age 18) Mr. Raines (age 34) in California after his second escape from Pine Hills School. Mr. Meirhofer needed a place to live and traveled to Bellingham to cohabitate with Mr. Raines. Apparently, the relationship was not monogamous. Reports indicate Mr. Meirhofer brought home teen-age boys (approximately 15-years-old) on a regular basis, including a boy he brought from California to live with him for a time. Following Mr. Meirhofer's arrest in 1987, police found several photographs of adolescent males who were sleeping or in sexually suggestive poses among his possessions. During the 2006 interview with Dr. Putnam, Mr. Meirhofer claimed it was Mr. Raines who "brought people home." He stated he only brought home one 15 year-old boy. Mr. Meirhofer also indicted during his 2007 interview that Mr. Raines had brought people home to help around the store and the property.

Reports indicate Mr. Meirhofer has admitted deviant sexual fantasies and sexual activity with minor males. He has provided drugs to the teenagers in exchange for sex. Mr. Meirhofer has attributed the onset of his deviant sexual interest in minor males to his lover, Mr. Raines. Mr. Meirhofer has stated that Mr. Raines directed him toward sexual activity with young males in order to curb his alleged interest in older males thereby decreasing the probability of finding another love interest.

Juvenile Offense History

Mr. Meirhofer has an extensive juvenile offending history:

On 04.04.68, (age 14) Mr. Meirhofer stole a bottle of gin from a truck.

On 12.21.68 (age 15), Mr. Meirhofer broke into a bar and stole several bottles of liquor. He was placed on probation for this offense.

On 02.02.69, (age 15) he was charged with vandalizing a post office.

On 04.18.69, (age 16) Mr. Meirhofer and some other boys broke into a nightclub and stole a large amount of alcohol and some cash. As result of this and his prior violations he was sent to a juvenile residential facility, Pine Hills School. Mr. Meirhofer committed this offense and the two previous offenses while on probation for the 1968 Burglary offense.

On 07.11.69, (age 16) Mr. Meirhofer ran away from Pine Hills School and did not return until the following November. He reportedly traveled by catching rides on freight trains to California, and worked/lived there for part of this time.

On 02.08.71 (age 17), Pine Hills School records indicate Mr. Meirhofer was returned to the facility from aftercare due to another Burglary. Apparently, he had been released to aftercare in 1970, and was to be discharged from aftercare in January 1971, due to his enlistment in the Armed Forces, but was returned to Pine Hills school after accruing another Burglary charge (February 1971).

04.04.71 (age 17), Mr. Meirhofer again ran away from Pine Hills School. He was not returned to the facility and soon reached age 18.

Adult Offense History

In 1982, Mr. Meirhofer was arrested for Driving While Intoxicated and placed on probation. In 1984, Mr. Meirhofer was arrested the second time for DUI. Then, he was court ordered to two years out patient substance abuse treatment and placed on probation for this offense.

On 02.18.84, Mr. Meirhofer was arrested for shoplifting.

On 05.13.85, Seattle police responded to a call (1:50 a.m.) from an unidentified woman that a 14-year-old boy she knew had called her and had sounded disoriented. The police investigated the address of Mr. Meirhofer's business where they found him in the company of two adolescent boys. The boys were described as "obviously intoxicated on some type of narcotic or foreign substance." A search revealed one of the boys to be in possession of a hypodermic needle, a spoon, and a small pipe containing residue. While the police were questioning the parties involved, a third boy came to the door and addressed Mr. Meirhofer by name, but hurried away when he saw the police. Mr. Meirhofer had no explanation why these boys were at his place of business at that hour, or how they had gotten intoxicated and in possession of drug paraphernalia. No action was pursued in this matter.

On 11.05.85, Mr. Meirhofer received traffic citations for Negligent Driving and Driving with a Suspended License, apparently in association with a traffic accident.

On 01.31.86, Mr. Meirhofer was cited for driving without a license.

On 11.30.86, Mr. Meirhofer was charged with Suspicion of Narcotics. The police report on this matter also indicated that he was in possession of materials that suggested he had been involved in planning burglaries of several homes (e.g. invoices from a stereo store that included customer addresses and their purchases. Several notes had been written on the invoices such as "too far" and "already checked." No action was taken by the police regarding this evidence.

On 02.05.87, Mr. Meirhofer received a second citation for Driving with a Suspended License.

Institutional Adjustment History

During Mr. Meirhofer's juvenile incarceration at the Pine Hills School, his behavior and attitude were described as "excellent." It was noted he got along well with the other boys, and did not require redirection from staff. Nevertheless, he ran away from the facility in 1969 and again in 1971.

During his adult incarceration with the Washington Department of Corrections, Mr. Meirhofer received only one infraction, for failing to produce a urine sample for urinalysis on 08.13.95.

Sexual Deviance Treatment History

During July of 1993, Mr. Meirhofer was transferred to Twin Rivers Correctional Center in order to participate in the Sex Offender Treatment Program. He dropped out of the program after two days, citing religious and personal beliefs. In contrast, during his interview with Dr. Putnam, Mr. Meirhofer reported he had initially expressed interest in treatment at Twin Rivers, but it had conflicted with a computer course he had already been taking for nine months. When Dr. Putnam asked for clarification about "dropping out due to personal beliefs," Mr. Meirhofer explained he had not agreed to what was involved in treatment, including phallometric assessment.

Mr. Meirhofer's commitment evaluation, completed by Anna Salter, Ph.D., noted his attitude/interest toward sex offender treatment seemed to fluctuate depending on whether he perceived it would help him or hurt him avoid civil commitment as a sexually violent predator.

Mr. Meirhofer has steadfastly been a non-treatment resident while residing at the SCC.

History of Diagnoses

In 1996, Anna Salter, Ph.D. provided the following diagnoses in her Commitment Evaluation of Mr. Meirhofer:

Axis I:	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia Not Otherwise Specified – Nonconsent Amphetamine Dependence in a Controlled Environment
Axis II:	Personality Disorder Not Otherwise Specified (with Antisocial Features)

George Nelson, Ph.D., offered the following diagnosis for Mr. Meirhofer as part of his 1998 Commitment Evaluation:

Axis I:	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Alcohol Dependency, in a controlled environment (Provisional) Amphetamine Dependence, in a Controlled Environment (Provisional) Cannabis Abuse (Provisional)
Axis II:	Personality Disorder Not Otherwise Specified with Antisocial Traits (provisional)

The following diagnoses were opined in 2004, by Lynn Sullivan-Saari, Ph.D., and again in 2005, by James Manley, Ph.D., as part of their Annual Reviews of Mr. Meirhofer.

Axis I:	302.2	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia, Not Otherwise Specified (Nonconsent) Alcohol Dependence, in a Controlled Environment Amphetamine Dependence, in a Controlled Environment Noncompliance with Treatment
Axis II:		Personality Disorder, Not Otherwise Specified with Antisocial Traits

APPENDIX C

FILED SCANNED 20
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WHATCOM COUNTY
WASHINGTON
BY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

In re the Detention of: ALAN L. MEIRHOFER Respondent.	**NO.** 96-2-01119-0 MOTION FOR EVIDENTIARY HEARING AND MEMORANDUM OF COUNSEL IN RESPONSE TO PETITIONER'S MOTION TO SHOW CAUSE

Motion

COMES NOW, the Respondent, Alan Meirhofer, by and through his attorney of record, Seth M. Fleetwood, and respectfully requests the court to grant Mr. Meirhofer a future evidentiary hearing at which the court would determine whether his condition has so changed that he should be unconditionally discharged or conditionally released to a less restrictive alternative. This motion is brought pursuant to RCW 71.09.090, State v. McCuistion, 169 Wn.2nd 633 (2010), In re Peterson, 145 Wn.2d 789 (2002), and the Forensic Psychological Evaluation of Dr. Luis Rossel, Psy.D., attached, the evaluation from the State's expert, Dr. Robert Saarri, and the records and files contained herein.

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ORIGINAL

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Procedural History

Mr. Meirhofer was committed to the Special Commitment Center (SCC) as a Sexually Violent Predator (SVP) after a jury verdict in Whatcom County on May 22, 2000. On April 23, 2010 Mr. Meirhofer exercised his right, pursuant to RCW 71.09.090(1), to petition the court for release. He is, therefore, before the court today on his 2010 annual review.

The "background" facts relied upon herein are those referenced by Meirhofer's expert and those facts summarized in the evaluation of the State's evaluator, Dr. Robert Saari, as it relates to criminal history and previous clinical analysis. Mr. Meirhofer hereby incorporates, into this memorandum, by reference those materials that make up the extensive file in this matter including, specifically, previous reports and declarations filed on Mr. Meirhofer's behalf by previous experts in support of previous annual review petitions.

The most recent SCC annual review evaluator, Dr. Saari, filed an annual review report, on behalf of the State, on April 28th, 2010. In the course of his sexual violence risk assessment he utilized one actuarial risk assessment tool, the Static-99R. As he notes in his report, "the Static-99R is a revised version of the Static-99. The major change in the Static-99R is that it better accounts for the risk factor of *age at release*. Additionally, the Static-99R provides new recidivism estimates based on different sample characteristics". *See page 12 of Dr. Saari's report.* Dr. Saari's report concluded that Mr. Meirhofer scored a 4 on the Static-99R which he found corresponds to a 5-year sexual recidivism rate of about 20% and a 10-year sexual recidivism estimate of about 30%.

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Mr. Meirhofer's expert, Dr. Luis Rosell, Psy.D., completed a report on January 22, 2011. After thorough review of the records in this case and after conducting an in person clinical evaluation of Mr. Meirhofer he concluded that his diagnosis should be alcohol dependence and amphetamine dependence, remission in a controlled environment and personality disorder, NOS, with antisocial traits by history. At trial Dr. Rosell would testify, among many other things, that the notion of a "mental abnormality" is a legal construct and not recognized in the DSM; additionally he believes that this diagnosis does not make him likely to commit future acts of sexual violence.

Dr. Rosell concluded that application of the Static-99R results, under any construction, in a dramatically lower than 50% likelihood of re-offending. Specifically, he found that, "if Mr. Meirhofer were compared to the Routine Sample, his score would correspond with an 8% recidivism rate over five years". Dr. Rosell noted that his reduced likelihood of re-offending is attributable, in part, to advanced age, something universally accepted as a factor in reduced recidivism. *See Dr. Rosell report at page 21.*

LAW & ANALYSIS

I. PROBABLE CAUSE EXISTS FOR A NEW TRIAL UNDER RCW 71.09.090 AS MR. MEIRHOFER HAS MADE A PRIMA FACIE SHOWING THAT HE NO LONGER MEETS THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR DUE TO HIS ACTUARIAL SCORES SHOWING RECIDIVISM RISK IN ONLY THE 8-30% RANGE AND HE HAS AN EXPERT WHO ARTICULATES WHY THE STATE'S DIAGNOSIS OF MENTAL ABNORMALITY IS INACCURATE.

The Respondent in this case is petitioning the Court for a new trial wherein he would seek his unconditional release or conditional release to a less restrictive alternative. It is his right

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to petition the Court. The Court must look at the evidence presented by the Respondent and evaluate whether that evidence, if believed by the jury, provides probable cause that the Respondent no longer meets the definition of being a sexually violent predator (SVP). Based on the recent decision of In re Detention of McCuistion the Court is no longer restricted to a limited scenario of "changed circumstances" Therefore, based on the evaluation of Dr. Rosell, as well as the statement of the State's evaluator indicating an uncertainty as to whether or not Mr. Meirhofer continues to pose a more likely than not risk of reoffending, the Respondent has provided the Court with evidence which, if believed by a jury, would determine that he no longer meets the definition of a sexually violent predator.

A. What is the definition of a sexually violent predator?

The jury instruction setting forth the elements for commitment as a sexually violent predator require three elements, all of which must be proved by the State at trial beyond a reasonable doubt. First, that the Respondent has been convicted of a crime of sexual violence. Second, that the Respondent suffers from a specific mental abnormality or personality disorder which causes serious difficulty in controlling his sexually violent behavior. Lastly, that this mental abnormality or personality disorder makes the Respondent likely to engage in predatory acts of sexual violence if not confined to a secure facility. WPI 365.10.

These instructions were similar to that which was approved by the Supreme Court in In re the Detention of Turay, 139 Wn.2nd 379, 986 P.2d 790 (1999).

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The first element is typically clear cut as a crime of sexual violence specified in the Revised Code of Washington as specific crimes which can be proven via testimony and/or Judgment and Sentence. Turay at 400.

The second element is the mental illness prong. The jury instructions explain that a "mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit criminal sexual acts to a degree that makes the person a menace to the health and safety of others." Furthermore, "volitional capacity" means the power or capability to choose or decide. It is this second element where the debate as to the Diagnostic Study Manual (DSM) and definitions of mental illnesses come into play. The focus is on the mental illness because the United States Supreme Court has made it clear that confinement simply because a person has a serious criminal history of violent or sexual behavior that may pose a danger in the future of committing a new crime is unconstitutional. The Court was concerned in Kansas v. Hendrick that "civil commitment" not become a "mechanism for retribution or general deterrence" which is the function of criminal law, not civil commitment. Kansas v. Hendrick, 521 US 346, 360 117 S.Ct. 2072 (1997), see also Kansas v. Crane, 534 US 407, 122 S.Ct. 867 (2002). Therefore, there must be proof of serious difficulty in controlling their behavior. Crane, 534 US at 412.

The third element is the "likely to engage in predatory acts" requirement which requires a jury to find that the Respodent will, if not confined in a secure facility, "more probably than not" engage in predatory acts if released unconditionally from detention. WPI 365. It is this

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third element which involves evidence regarding the actuarial instruments used to predict likelihood of recidivism.

B. Procedure and Burdens for SVP Show Cause Hearing.

Once a Respondent has been found to be an SVP, pursuant to the original commitment trial, RCW 71.09.060 mandates that the SVP be indefinitely committed until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a SVP; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community. Although the commitment is indefinite a review of the SVP's continued confinement is mandated to be reviewed annually. Pursuant to RCW 71.09.090(2)(a) the Respondent is notified each year of his right to petition for release at a show-cause hearing. He may then assert the right, waive the right, or if he refuses to choose the Court must set a show cause hearing to determine if probably cause exists to warrant a hearing on the SVP's changed conditions. Outside the annual review process the Respondent may petition the Court at any time for unconditional release or to a less restrictive placement. RCW 71.09.090(2).

The relative burdens of the Petitioner and Respondent at the show cause hearing are addressed in RCW 71.09.090(2)(c):

> (c) If the court at the show cause hearing determines that either: (i) The State has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and condition cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a

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> proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

Thus, a new trial is granted if the Petitioner fails to meet its burden or if the Respondent presents probable cause to show changed conditions or a less restrict alternative is proposed that meets the listed criteria.

In 2002, the Washington Supreme Court decided In re the Detention of Peterson, 145 Wn.2d 789 (2002), which carefully delineates the minimal burden a Respondent faces in order to prevail at a show cause hearing. If the Respondent presents a prima facie showing that his condition has so changed that he no longer meets the definition of an SVP, then a trial must be ordered. See also McCuistion, supra at 644, FN 6 (noting that an SVP is entitled to a full jury trial if he makes a prima facie showing that he no longer meets the definition of an SVP).

Furthermore, the trial court is not permitted to weigh the evidence at a show cause hearing. In other words, the trial court cannot choose the state evaluator's reports over the respondents' expert's reports. The court may only decide whether "facts exist" that, if believed, would show the person is no longer an SVP. In re the Detention of Peterson, 145 Wn.2d at 797-798. Additionally, "conclusory statements cannot establish probable cause, so a court must look beyond an expert's stated conclusions to determine if they are supported by sufficient facts. But it cannot weigh the evidence by comparing the opposing party's evidence. Nor can it weigh the credibility of an expert's opinion." In re the Detention of Ward, 125 Wn.App. 381, 387 (2005).

In 2005, the legislature amended the SVP statute to severely limit the means by which a detainee could petition for release. According to the 2005 amendments, an individual could only

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gain a full hearing if he could show positive change through treatment or some extreme physiological change that rendered him incapable of sexually violent behavior. RCW 71.09.090(4).

However, in late 2010 the Washington State Supreme Court held that these amendments were unconstitutional. State v. McCuistion, 169 Wn.2d 633 (2010). The McCuistion Court held that the Legislature may not continue to confine someone who is no longer *both* mentally ill and dangerous and that the legislature may not restrict the "multitude of ways in which a person might potentially cease to meet the definition of an SVP". Id. at 643-644.

The Court explained:

> Because commitment for SVP is indefinite in nature, the due process requirement that an SVP be mentally ill and dangerous is ongoing. Foucha, 504 U.S. at 77. ("The acquittee may be held as long as he is both mentally ill and dangerous, but no longer."); accord O'Connor v. Wollert, 422 U.S. 563, 574-576, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975). This is true because a law allowing the detention of individuals who are no longer mentally ill or dangerous would not be narrowly tailored to the State's compelling interests. Id. We have, therefore, attached constitutional significance to the SVP statute's annual review process, whereby the State must show that the SVP continues to meet the standard for commitment

Id. at 638-639

The Court then attacked the unconstitutional sections of RCW 71.09.090:

> The flaw in the 2005 amendments is that they separate the annual review inquiry from the ultimate constitutional standard under Foucha, 504 U.S. at 77. The SVP statute upheld in Young was narrowly tailored to allow the detention only of currently mentally ill and dangerous individuals. Young, 122 Wn.2d at 39. By altering the annual review standard, the 2005 amendments authorize the State to detain individuals who are no longer mentally ill and dangerous. **There is a multitude of ways in which a person might potentially cease to meet the definition of an SVP and, thus, cease to be detainable under the due process standard.** Yet, only two of those ways are cognizable under the 2005 amendments to the annual review provisions. By artificially

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> limiting the type of information that is relevant to continued SVP commitment, the 2005 amendments allow the detention of someone who is no longer mentally ill or dangerous, and therefore disrupt the narrow tailoring present in the pre-amendment SVP law. Because the SVP law, as amended, is not narrowly tailored to the State's compelling interests, we strike down the 2005 amendments as unconstitutional.

Id. at 643-644 (boldface added)

Furthermore, the Court in McCuistion specifically noted that one of the ways in which a detainee might cease to meet the definition of an SVP is through changes in recidivism risk. In other words, if an SVP can make a prima facie showing that he is no longer more likely than not to reoffend, he would be entitled to a full hearing under RCW 71.09.090(3)(a). A change in only a single factor used in a multifactor actuarial analysis "may lower the risk prediction so that it no longer suggests that the individual is an SVP". Id at 643,

C. The Respondent has made a prima facie showing that he no longer meets the definition of a sexually violent predator.

The Respondent has submitted the attached evaluation of Dr. Luis Rosell as evidence that he no longer meets the definition of a sexually violent predator under RCW 71.09. Dr. Rosell reviewed the court file records, he reviewed past and current SCC Annual Reviews submitted on behalf of the State as well as those previously filed in support of Mr. Meirhofer, including the 2008 report of Dr. Wollert, he has conducted in person evaluations of Mr. Meirhofer and administered the same psychological tests and instruments as conducted by the State's evaluator, Dr. Saari, in his 2010 review. Dr. Rosell considered whether Mr. Meirhofer currently meets the statutory definition of an SVP and concluded that he does not.

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Dr. Rosell's report describes, in explicit detail, the reasons and factual basis for his conclusions, including changes in the actuarial scoring for Mr. Meirhofer which demonstrate he is not "more likely than not" going to commit a new sexual offense if released from confinement.

1. Changes in the Static-99R actuarial instruments show Mr. Meirhofer is NOT "more likely than not" to commit a new crime of sexual violence if released, and therefore, he does not meet the definition of being a sexually violent predator.

The first reason for concluding that Mr. Meirhofer no longer meets the definition of an SVP is that when both Dr. Rosell and Dr. Saarui, on behalf of the State, scored Mr. Meirhofer using the most common actuarial instrument used for SVP cases, the Static-99R, Mr. Meirhofer falls into the category showing a less than likely chance of committing a new offense.

a. What are the actuarial instruments and how are they used?

An actuarial is a statistical algorithm in which variables are combined to predict the likelihood of a given outcome. For example, actuarial formulas determine how much you will pay for automobile or homeowner's insurance by combining relevant factors specific to you (e.g., your age, gender, claims history) and your context (e.g., type of car, local crime rates, regional disaster patterns). The mechanical approach to predicting has been preferred over clinical judgments which many believe are more unreliable. As Dr. Wollert previously cited in Mr. Meirhofer's 2008 report, the use of actuarial procedures has been proven to be the most accurate approach currently available when focusing specifically on sex offender recidivism.

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An actuarial system includes 1) a battery of risk items (e.g., whether or not an evaluee has been married, whether or not he has ever been convicted of a violent offense, how many times he has been convicted of a sex offense); 2) a manual for assigning numerical ratings to risk items (e.g., an evaluee who has committed a violent crime may be given a "1" on this risk item whereas an evaluee who has not may be given a "0") and combining the ratings into a total score; and 3) an experience table that lists the percentage of offenders with each score who have recidivated in the past. There have been multiple different actuarials that have experience tables which have been used for sex offenders in the civil commitment realm. These have included the Static-99, the Static-99R, Static 2002, the RRASOR, the MnSOST-R and the SORAG.

b. <u>The Static-99 and the Static-99R (revised)</u>

The actuarial instrument used in Mr. Meirhofer's case was the Static-99R. The fundamental difference between the Static-99 and the Static-99R is simply the additional component of age as a factor that reduced recidivism which is newly taken in to account on the Static-99R. According to it's official website, the Static-99 is a ten item actuarial assessment instrument created by R. Karl Hanson, Ph.D. and David Thornton, Ph.D. for use with adult male sexual offenders who are at least 18 years of age at time of release to the community. It is the most widely used sex offender risk assessment instrument in the world and also the most widely researched, with 63 replications demonstrating, on average, moderate predictive accuracy. *See* , *Helmus, Hanson, Thornton, Reporting Static-99 in light of New Research on Recidivism Norms, The Forum, 21(1), Winter 2009, p38-45.* The scores on the

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Static-99 can be translated into a prediction of relative risk of reoffending, thus placing people into categories of low, moderate-low, moderate-high, and high risk.

The original offenders used in the study to create the original Static-99 were released in the 1960's through the 1980's. However, "crime rates peaked in the early 1990s and has been generally declining since then" states the Static-99 website and "sexual offenses appear to be no exception". It has been found that the percentages of sex offenders who commit new offenses, known as the base rate recidivism rate, have gone down over the past several decades. It has also been found that the base recidivism rate is most elevated for the youngest offenders and steadily decreases with age, according to the Static-99 website.

The practical result then is that evaluators need to use actuarial systems that take factors such as age into account as fully as possible in order to estimate the risk of sexual recidivism. Thus this criterion rules out the use of the MnSost-R and the SORAG as well as the use of miscellaneous risk factors that are not corrected for age of recidivism reduction. We again note that both Dr. Saari and Dr. Rosell utilized only the Static-99R in the 2010 review. Both the MnSOST-R and the SORAG were used in Mr. Meirhofer's original trial.

The reasons for the change in crime rate are interesting to discuss and can be debated, but they are not relevant to Mr. Meirhofer's arguments. But it is the affect of these changes on the Static-99 that is important. Until approximately October of 2010 the original set of recidivism rates were based on the 1086 original offenders sampled. However, after years of study and discussion (much of it in professional journals by experts such as Mr. Meirhofer's previous expert, Dr. Wollert) regarding the significantly lower recidivism with advancing age,

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Hanson and Thornton decided the new data created a new norm that should replace the original norms. *See Static-99 website.*

The practical meaning of this change is that the likelihood of Mr. Meirhofer committing a new crime if released goes down significantly. As previously stated, Mr. Meirhofer is now calculated as a "4" on the Static-99R. This is, in part, because Mr. Meirhofer is now nearly 58 years old. The expert testimony would be that the recidivism rate after 5 years would only be 8%. It is also important to reiterate that the evaluator for the Petitioner, the State of Washington, also confirms that Mr. Meirhofer is only a 4 on this actuarial instrument. If the State cannot prove that Mr. Meirhofer is more likely than not, i.e., not 50.1% likely to reoffend then they cannot prove he is a SVP. This information, under Peterson and McCuistion is sufficient for the Court to find that there is evidence that Mr. Meirhofer is no longer an SVP.

2. The very fact the Respondent has presented an expert who concludes the Respondent no longer meets the definition of SVP is prima facie evidence requiring a new trial.

The threshold burden the Respondent must meet is merely prima facie evidence that he no longer meets the definition of a SVP. Prima facie evidence "is evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports. Black's Law Dictionary, Fifth Edition. The case law is clear that a Court is merely to determine if such prima facie evidence exists.

RCW 71.09.090 provides for persons committed as SVPs to petition for release and requires trial courts to set show cause hearings at which the court determines whether probable cause exists to warrant a new hearing on the question of whether "the person's condition has so

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changed that he or she no longer meets the definition of a sexually violent predator". RCW 71.09.090(2)(a). In relevant part the statute requires:

> The court shall set a show cause hearing to determine whether *facts exist* that warrant a hearing....If the court at the show cause hearing determines that *probable cause* exists to believe that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged, *then* the court shall set a hearing on the issue. (Emphasis added) RCW 71.09.090(2).

If a Respondent establishes probable cause to believe his condition has so changed that he no longer meets the definition, the trial court *must* set a new commitment hearing. (Emphasis added) RCW 71.09.090(2)(c).

The Washington State Supreme Court further refined the particular determinations that are required of Judges at probable cause hearings; As previously noted, in the case of *In re Detention of Peterson* (and the companion case of Thorell), 145 Wn.2nd 789, 42 P.3d 952 (2002) the court held that probable cause exists if the proposition to be proven has been prima facie shown. Id at 797. Under the statute "the inquiry is whether facts exist which warrant a hearing on the merits. Id at 797. The standard of proof is probable cause". Id at 797. The court at a show cause hearing where probable cause is the measure is not to weigh the evidence as they would in a hearing where the preponderance standard were in effect but, rather, "simply determine if facts exist". Id at 797. The court continued:

> A trial standard of proof has no application to probable cause determinations, only determinations on the merits after a full presentation of all the evidence where that evidence can be weighed and disputes can be resolved by the fact finder according to the appropriate standard of proof. Courts do not "weigh

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evidence" to determine probable cause. Id at 797.

The court determines whether the facts (or absence thereof), if believed, warrant more proceedings. Id. at 798. The court held that at the show cause stage of the proceedings, the trial court must not weigh the evidence but merely determine if the facts exist. Id. at 798. A trial court's decision about whether evidence meets the probable cause standard is reviewed de novo. Id. at 799.

The court, in Peterson, described a way probable cause may be established through the prisoner's proof by stating in relevant part:

> Even if the State carries its burden to prove a prima facie case for continued imprisonment, the prisoner may present his own evidence which, if believed, would show (1) the prisoner no longer suffers from a mental abnormality or personality disorder, i.e., the prisoner has "so changed," or (2) if the prisoner still suffers from a mental abnormality or personality disorder, the mental abnormality or personality disorder would not likely cause the prisoner to engage in predatory acts of sexual violence if conditionally released to a less restrictive alternative or unconditionally discharged. If the prisoner makes either showing, there is probable cause that continued incarceration is not warranted. Former RCW 71.09.090((2) then mandates the court to set the matter for a full evidentiary hearing. Id.at 798.

In re the Detention of Young, 120 Wn.App. 753, P.3d 810 (2004) has also recognized that changes in scientific research can be a basis for granting a new evidentiary hearing. The statute requires a periodic assessment of a person committed under RCW 71.09.070 to determine his continued dangerousness to the community and to ensure the person continues to meet the criteria for commitment. Id. at 760. The Court states in relevant part:

> If current risk assessment techniques or new diagnostic tools suggest a person is no longer an SVP then the only adequate way of determining whether that person still meets the criteria for commitment is to give him a new commitment

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hearing. What new scientific studies do or do not show about a persons risk to reoffend at the time a crime was committed is not relevant to the ultimate question of whether that person is an SVP today. Id at 760.

Young involved an annual review where the Respondent petitioning for a hearing presented a psychologist's expert report which concluded that the offender was no longer a sexually violent predator. The expert presented evidence, reasoning, research, and analysis which supported his conclusion. He found that increased age drastically reduces the occurrence of recidivism. He also demonstrated how new risk assessment techniques and diagnostic tools can be properly relied upon to establish that a person no longer meets the definition of an SVP. Young also reaffirmed the position expressed in Peterson that court's in show cause hearings are not to weigh the evidence but, rather, to merely determine if the evidence exists.

In the present case, Dr. Rosell's evaluation concludes that Mr. Meirhofer does not meet the definition of being a SVP. He bases that conclusion on thorough analysis of the extensive record in this case, Mr. Meirhofer's behavior and response in a clinical evaluation, and his qualified and expert ranking of the Static-99R, the actuarial risk assessment tool. The Court is required, by law, to simply determine whether "facts exist" that, if believed, would show the person is no longer an SVP. In re the Detention of Peterson, 145 Wn.2d at 797-798. The Court cannot consider any possible lack of credibility of Dr. Rosell and cannot weigh or compare the State's evaluator with Dr. Rosell. Id. In this case facts do exist that form the basis of the opinion that Mr. Meirhofer no longer meets the definition of a SVP.

a. Mr. Meirhofer does not suffer from a mental abnormality such that it makes it likely he will engage in predatory acts of sexual violence.

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Dr. Rosell's report cited numerous authorities that demonstrate the questionable validity of Hebephilia as a disorder that might cause future dangerousness. His research and references make clear that the overwhelming weight of expert opinion on the subject cast real doubt on its efficacy; indeed, as he notes, the DSM does not even categorize Hebephilia as a mental disorder. Similarly, Dr. Rosell also rules out a diagnosis of Paraphilia. In his report he cites Meirhofer's 2008 expert, Dr. Wollert, who stated,

> "I am unaware of any evidence indicating that any of the paraphilias "cause" the enactment of deviant sexual behavior....In the absence of such evidence it seems equally plausible that Mr. Meirhofer misconducted himself for the reasons he gave – that he was drug-affected, alienated, dispirited, and intent on having sex even though this would involve the use of force. Mr. Meirhofer's sexual offending is no less abhorrent because it occurred within the context of using drugs. All things considered, however, it was apparently motivated by a criminal frame of mind and lifestyle rather than a paraphilia"

See Rosell report at pg 17-19.

It is also worth noting that Dr. Saari's 2010 evaluation rules out pedophilia as a current diagnosis, a diagnosis that was central to the State's case at the original commitment hearing. Dr. Rosell's opinion is yet another basis to demonstrate Mr. Meirhofer has made a "prima facie" showing to warrant a new hearing.

II. THE WASHINGTON STATE COURT OF APPEALS, DIVISION I, HAS REMANDED MEIRHOFER'S 2008 ANNUAL REVIEW, WHICH WAS HEARD IN SKAGIT COUNTY, WHEREIN DR. WOLLERT WAS HIS EXPERT, BACK FOR A NEW SHOW CAUSE HEARING BASED ON MCCUSTION.

On December 20, 2010 the Washington State Court of Appeals, Division One, ruled that Mr. Meirhofer is entitled to a new show cause hearing, which was heard in Skagit County Superior Court. The ruling states in relevant part that "in light of McCuistion we accept the

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State's concession that Meirhofer is entitled to a new show cause hearing. We therefore reverse the trial court's order and remand for a new show cause hearing under the pre 2005 show cause standard".

In that 2008 review, Meirhofer had retained Dr. Wollert, a licensed psychologist with extensive experience evaluating and treating individuals with sexual deviancy problems. Dr. Wollert had addressed the question of whether Meirhofer's condition has so changed that he no longer meets the criteria for an SVP. Dr. Wollert concluded that he does not. *See declaration of Dr. Wollert filed herein.* Dr. Wollert had presented a thorough report which demonstrated thoughtful consideration and well reasoned analysis of Meirhofer's condition on par with the quality of work of Dr. Barbaree that was found to be lauditory by the court in the *Young case*. Dr. Wollert concluded his declaration by stating:

> Mr. Meirhofer is ineligible for classification as an SVP because he is not positive for a volitional or emotional impairment, does not suffer from an acquired or congenital condition, and is unlikely to recidivate were he to be released to the community.

Dr. Wollert's declaration met the threshold articulated in *Peterson, Thorell* and more recently in *Young* in that he credibly expressed his professional opinion, to a reasonable degree of scientific certainty, that Meirhofer no longer meets the criteria set forth in RCW 71.09 to classify him as an SVP. His declaration went to great length at explaining his position and presented evidence supporting it. He cited case-law and published peer reviewed scientific studies and reports that supported his methods in making his determination. He also logically assessed why his determination is more likely to be accurate than the determination advanced by

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Dr. Manley for the State, whose reports was nothing more than a recitation of the previous years report, and described how Dr. Manley's report failed to meet certain scientific, professional and legal standards.

Dr. Wollert discussed recent scientific advances made since Meirhofer's commitment in 2000 and since his last Annual Review that supported his position on Meirhofer's mental status. He presented evidence by the Editor of the DSM-IV-TR who articulated in deposition the mistakes they made in wording that have since led State evaluators to misconstrue its meaning and make erroneous diagnoses.

Dr. Wollert based his opinion on recent advances in science (Static 99), recent case-law, recent peer-reviewed studies and reports, mistakes made by the state evaluator who mistakenly relied on admitted mistakes made in the DMS-IV-TR, and a personal interview with Meirhofer himself. Taken together these elements met the threshold required by RCW 71.09, Peterson, Thorell, Young and, most recently, McCuistion for granting a full hearing to Meirhofer so the trier of fact can weigh the evidence presented and make a fully informed determination.

III. CONCLUSION

The attached declaration of Dr. Rosell, Psy.D., provides this Court with prima facie evidence to order a trial in Mr. Meirhofer's case. As our Supreme Court in McCuistion recently acknowledged, there are a multitude of ways a Respondent might potentially cease to meet the definition of a SVP. The Court can no longer restrict the Respondent to the 2005 amendments limiting his pathway to a new trial.

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APPENDIX D

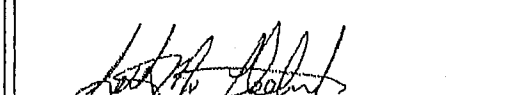
Mr. Meirhofer has demonstrated multiple reasons that a new trial should be granted which include the concurrence of opinion between the State evaluator and Dr. Rosell that Mr. Meirhofer's risk of recidivism makes him less likely than not to reoffend.

Pursuant to RCW 71.09 the court shall grant a new hearing if evidence presented makes a prima facie case that a prisoner's condition has so changed that the person is not likely to engage in predatory acts of sexual violence if released unconditionally or to a less restrictive alternative.

Mr. Meirhofer has presented that evidence in the form of Dr. Rosell's declaration which asserts, after extensive evaluation and thorough analysis, that he no longer meets the definition of an SVP and makes a prima facie case that Meirhofer's condition has "so changed" that a full evidentiary hearing is required by law.

Meirhofer is approaching sixty years of age and has never been granted an evidentiary hearing to address his continued confinement since his original commitment trial over a decade ago. In light of the evidence presented by Dr. Rosell, including reasoned and fact based rebuttals to the State's finding of mental disorders, and significant peer reviewed refinements in the Static-99R, and applicable statute and case law, we respectfully request that Mr. Meirhofer be granted an evidentiary hearing.

Dated this 25th day of February, 2011.



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Luis Rosell, Psy.D.
Licensed Psychologist

Sexual Violent Predator Release Evaluation

Name: Alan Meirhofer
Date of Birth: 4/7/53
Date of Evaluation: 12/14/10
Date of Report: 1/22/11

Reason for Referral

I was contacted by attorney Seth Fleetwood to evaluate Mr. Meirhofer who is currently civilly committed under the Sexually Violent Predator Statute pursuant to Chapter RCW 71.09. Based on the recent McQuistion[1] ruling the current referral question relates to the Washington Statute RCW 71.09.090 (2)(c) .... *probable cause exists to believe that the person's condition has so changed that (A) The person no longer meets the definition of a sexually violent predator; or (B) released to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.*

Mr. Meirhofer consented to the evaluation conducted at the SCC on McNeil Island that lasted two and a half hours.

Records Reviewed

- ❑ Annual Reviews by Robert Saari, Ph.D., James Manley, Ph.D. and Richard Wollert, Ph.D.
- ❑ Paper work completed by Mr. Meirhofer

[1] In State v. McCuistion that a constitutional challenge to the 2005 amendments to the annual review process under Washington's sexually violent predator (SVP) statute, chapter 71.09 RCW. David McCuistion was indefinitely committed as an SVP in 2004. In 2006, the Pierce County Superior Court held a show cause hearing for the consolidated periods of 2004-2006. It concluded that McCuistion failed to establish probable cause to believe his condition had "so changed" under RCW 71.09.090 as to require a trial on his continued confinement. McCuistion challenges this provision, arguing that, as amended, it offends both due process and the separation of powers. The Washington Supreme Court held the 2005 amendments, which limit the facts that can be considered to establish probable cause, violate substantive due process.

Background Information

Mr. Meirhofer was born in Bozeman and raised in Manhattan, MT. He was raised by his parents until age ten until they divorced. His parents were Clifford and Eleanor. After the divorce he lived with his mother. He had two brothers and two sisters. He was the middle child. He stated his upbringing was "pretty good." He explained, "I mowed lawns, raised calves, and had a paper route." He had positive relationships with his parents and siblings. He denies any problematic behavior as a child. Mr. Meirhofer was never removed from home because of problems at school or at home. With regard to abuse he stated that he was never physically, sexually or emotionally abused. His father died two years ago and he keeps contact with his mother and his step-father. He also keeps contact with his siblings. His brother committed murders in Montana and after being arrested he killed himself in jail while awaiting trial.

Educational History

Mr. Meirhofer liked school when he was a child. His attendance was good and his grades were average. Mr. Meirhofer never failed a grade. The highest grade he completed was the tenth grade. He obtained his GED in Bellingham Vocational Tech School in 1983. Mr. Meirhofer was not considered a troublemaker in school and denies fighting or being a bully. Mr. Meirhofer was suspended or expelled.

While incarcerated he was involved in many college courses. They included 235 credits with 3.81 GPA. He obtained two certificates (automated office operations and two degrees (Computer Service Technology and A.A. in General Studies from Edmunds Community College)

Employment History

Mr. Meirhofer bought and sold antiques, theater and restaurant equipment in Bellingham. He ran this business from 1973 until 1984. He ran the business with his boyfriend who he lived with from 1971-1984.

Sexual/Social History

Mr. Meirhofer dated a female when he was seventeen and living in Texas. He was living with some cowboys and did not want them to suspect that he was gay. Mr. Meirhofer knew he was gay since age thirteen. He dated her for a few months and they kissed but did not have sexual intercourse. He had sexual intercourse with a woman at age twenty-one. The second woman was at age twenty-three. This also was a one time occurrence.

Mr. Meirhofer had his first sexual interaction with a male at age 16 while in California. He met his boyfriend when he was eighteen and they lived together for the next thirteen years. He has had about ten other sexual interactions with males while involved with his boyfriend but they had an open relationship. After their break-up due to Mr. Meirhofer drug use he became involved with other men through his drug use.

While incarcerated he went seventeen years without any sexual behavior. At the SCC he received sexual misconduct for consensual sexual behavior with another resident in 2006. He admits that he has had other sexual behavior with residents but not in the past year.

Records indicate his longest relationship, with Jim Raines, lasted 13 years. In 1971, Mr. Meirhofer met (age 18) Mr. Raines (age 34) in California after his second escape from Pine Hills School. Mr. Meirhofer needed a place to live and traveled to Bellingham to cohabitate with Mr. Raines. Apparently, the relationship was not monogamous. Reports indicate Mr. Meirhofer brought home teen-age boys (approximately 15-yearsold) on a regular basis, including a boy he brought from California to live with him for a short period of time. Following Mr. Meirhofer's arrest in 1987, police found several photographs of adolescent males who were sleeping or in sexually suggestive poses among his possessions. During the 2006 interview with Dr. Putnam, Mr. Meirhofer claimed it was Mr. Raines who "brought people home." He stated he only brought home one 15 year-old boy. Mr. Meirhofer also indicted during his 2007 interview that Mr. Raines had brought people home to help around the store and the property.

Reports indicate Mr. Meirhofer has admitted deviant sexual fantasies and sexual activity with minor males. He has provided drugs to the teenagers in exchange for sex. Mr. Meirhofer has attributed the onset of his deviant sexual interest in minor males to his lover, Mr. Raines. Mr. Meirhofer has stated that Mr. Raines directed him toward sexual activity with young males in order to curb his alleged interest in older males thereby decreasing the probability of finding another love interest.

Substance Abuse History

Mr. Meirhofer had his first drink at age sixteen. While drunk he and some friends stole liquor from a bar and were sent to Pine Hills School in Miles City, MT. They were there for a few months and then escaped and were gone for four months and ended up in California. He traveled all over the country on freight trains and hitchhiking.

Mr. Meirhofer stated that he had a drinking problem that lead to two DWIs in the 1980s. He completed a 28 day treatment program and was in AA for two years as part of a deferred prosecution.

Mr. Meirhofer started using marijuana at age eighteen, cocaine a few times and tried amphetamines when he was younger. He started using methamphetamine at age thirty-one. He was instantly addicted and started using it daily and then started selling it to afford his habit. Mr. Meirhofer denies ever manufacturing and was arrested once for possession but the charges were dropped due to an illegal search. He used it for three years and the drug became more important than his relationship with his partner. His last use was in 1987 when he was arrested for his index offense. He has smoked marijuana a few times while confined but it has been several years. Mr. Meirhofer has no interest in ever using methamphetamine based on the consequences the drug has had on his life and that of others.

Mr. Meirhofer stated he is not usually bored. He keeps busy watching television, playing games on his computer and writing. He works in the kitchen. Mr. Meirhofer stated he is rarely angry but he has yelled at people but then apologizes. He views his temper as short-lived.

Juvenile Offense History

- 4/04/68 (age 14) Mr. Meirhofer stole a bottle of gin from a truck.
- 12/21/68 - broke into a bar and stole several bottles of liquor. He was placed on probation for this offense.
- 2/02/69 - charged with vandalizing a post office.
- 4/18/69 – Mr. Meirhofer and some other boys broke into a nightclub and stole a large amount of alcohol and some cash. As result of this and his prior violations he was sent to a juvenile residential facility, Pine Hills School. Mr. Meirhofer committed this offense and the two previous offenses while on probation for the 1968 Burglary offense.
- 7/11/69 - Mr. Meirhofer ran away from Pine Hills School and did not return until the following November. He reportedly traveled by catching rides on freight trains to California, and worked/lived there for part of this time.
- 2/08/71 - Pine Hills School records indicate Mr. Meirhofer was returned to the facility from aftercare due to another Burglary. Apparently, he had been released to aftercare in 1970, and was to be discharged from aftercare in January 1971, due to his enlistment in the Armed Forces, but was returned to Pine Hills school after accruing another Burglary charge (February 1971).
- 4/04/71 - Mr. Meirhofer again ran away from Pine Hills School. He was not returned to the facility and soon reached age 18.

Adult Offense History

- 1982 - Mr. Meirhofer was arrested for Driving While Intoxicated and placed on probation.
- 1984 - Mr. Meirhofer was arrested the second time for DUI. Then, he was court ordered to two years out patient substance abuse treatment and placed on probation for this offense.
- 2/18/84 Mr. Meirhofer was arrested for shoplifting.
- 5/13/85 - Seattle police responded to a call (1:50 a.m.) from an unidentified woman that a 14-year-old boy she knew had called her and had sounded disoriented. The police investigated the address of Mr. Meirhofer's business where they found him in the company of two adolescent boys. The boys were described as "obviously intoxicated on some type of narcotic or foreign substance." A search revealed one of the boys to be in possession of a hypodermic needle, a spoon, and a small pipe containing residue. While the police were questioning the parties involved, a third boy came to the door and addressed Mr. Meirhofer by name, but hurried away when he saw the police. Mr. Meirhofer had

no explanation why these boys were at his place of business at that hour, or how they had gotten intoxicated and in possession of drug paraphernalia. No action was pursued in this matter.

- 11/05/85 - Mr. Meirhofer received traffic citations for Negligent Driving and Driving with a Suspended License, apparently in association with a traffic accident.
- 1/31/86 - Mr. Meirhofer was cited for driving without a license.
- 11/30/86 - Mr. Meirhofer was charged with Suspicion of Narcotics. The police report on this matter also indicated that he was in possession of materials that suggested he had been involved in planning burglaries of several homes (e.g. invoices from a stereo store that included customer addresses and their purchases. Several notes had been written on the invoices such as "too far" and "already checked." No action was taken by the police regarding this evidence.
- 2/05/87 - Mr. Meirhofer received a second citation for Driving with a Suspended License.

From Previous Annual Reviews at the SCC

Offense History

Offense 1 (Convicted for this offense)

Official Version

- Rape in the 1st degree and Kidnapping 2nd degree. On 7/17/87, a 13-year-old boy from Blaine, Washington observed a man, who he later identified as Mr. Meirhofer (age 34), drive by his home while he was in the front yard. Sometime during the early morning hours of July 18, the boy was awakened by Mr. Meirhofer, who was wearing a t-shirt that he had fashioned into a mask. He warned the boy to be quiet as he stuffed a piece of cloth into his mouth and secured it by wrapping tape around the boy's head several times. Mr. Meirhofer put a hunting knife to the boy's throat, warning him again not to cry out. He pulled the boy out of his bed, threw him over his shoulder, carried him out of the house, placed him into his car, and drove off. Eventually, he stopped the car and ordered the boy to undress. Mr. Meirhofer. also undressed and fondled the boy's genitals, fellated him, and anally raped him. After the assault, they both dressed. Mr. Meirhofer drove the car around for a while longer, keeping the boy with him until the late afternoon. Before releasing the boy, Mr. Meirhofer warned him not to tell anyone and threatened to burn down the boy's home if he did. When the victim's parents discovered in their son missing they attempted to call the police and discovered that their telephone line had been cut. Both the boy and his stepfather (who happened to see Mr. Meirhofer dropping the boy off) were able to record a partial license plate number from the car. Both were able to identify Mr. Meirhofer from a police lineup. While investigating this offense, police learned that Mr. Meirhofer had been renting a room from an associate. Among Mr.

Meirhofer's possessions, the police found several items belonging to his victim's family, as well as items belonging to victims of other burglaries and assaults. On 10.23.87, Mr. Meirhofer was arrested. Prior to his arrest, he led the police through Bellingham on a high-speed chase that ended in a car crash. After the crash, Mr. Meirhofer resisted police orders to exit his vehicle and had to be physically removed by police. Even then, Mr. Meirhofer offered a false identity. He was subsequently charged and convicted of Eluding a Pursuing Police Vehicle. Mr. Meirhofer acknowledged abducting and raping his victim. His account of the crime was essentially the same as the boy's with one notable exception. While Mr. Meirhofer acknowledged having fellated the boy, he denied sodomizing him because of his inability to maintain an erection due to the amount of methamphetamine he had taken over the preceding day of the offense. Instead he had used the end of a small baton. "Like policemen have. It only went in a little bit, but it was penetration." (Per his 2007 admission during AR 2007 interview). He denied having any other sexual contact with other minors. Mr. Meirhofer denied having felt any sexual attraction to the boy prior to the offense, but thought somehow he would feel aroused when he committed the assault. Nevertheless, he has told previous evaluators that he had subsequently fantasized about the rape. Mr. Meirhofer was sentenced to 99 months in prison.

Mr. Meirhofer's Version

Mr. Meirhofer acknowledged that the above account was an accurate depiction of this offense. Later in the interview, he said that he had seen the boy in his yard earlier that day. This was the first time he had seen the boy. It was after seeing the boy in the yard that he decided to kidnap and rape him. He said that he planned the offense for a few hours before committing it.

Offense 2 (Convicted for this offense)

Official Version

- Burglary in the 1st degree, Assault in the 2nd degree. During the afternoon of 12/4/86, a 33 year-old woman (SH) was studying in the basement of her home when she heard someone enter into the main floor of her residence. As it was about the time the 13-year-old son (Matthew) of her housemate (MM) to come home, she assumed that it was him. Later, after she discovered that Mathew had not come home and that her keys were missing from the upstairs area, she suspected that the noise she had heard had been a burglar. In addition, her housemate was missing a jewelry box. A police report was filed with the Seattle police. Because the keys to the residence were missing, it was decided that Matthew would sleep upstairs with his mother, while SH slept on the main floor. At approximately 2:45 a.m. the answering machine, (which had an alarm feature that activated when the phone line was cut) awoke SH. Immediately after that, she heard a key being inserted into the kitchen entrance of the residence. Investigating the sound SH saw a man, later identified as Mr. Meirhofer, attempting to open the

door with her key. SH shouted at him hoping that he would retreat. Instead, he proceeded into the home and SH ran upstairs to warn the others. The two women and the boy took refuge in a room and used their body weight to block the door. Mr. Meirhofer had pulled on what appeared to be a stocking over his face and tried to force his way into the room. He warned them that he had a knife and a partner downstairs who had a gun. During the struggle Mr. Meirhofer's jacket became caught in the door-jam and he used his knife to cut himself free. Because the phone line had been cut from the outside of the house, the victims were unable to call for help. On his mother's instructions Matthew climbed out the window and ran to a neighbor's house for help. When the women told Mr. Meirhofer that Mathew had gone for help, he fled. Mr. Meirhofer acknowledged his involvement in this offense but denied any sexual interest in Matthew. He explained that he had returned to the home because he hoped to find money in the wallets of the house's occupants. The police noted that Matthew would have normally been home alone during the time of the initial break-in.

During investigation of this incident the police learned that on 11/25/86, the home of a friend of MM's had been burglarized. The victim of that burglary (a single mother with two children) discovered that her lingerie had been gone through and had apparently been used for masturbation by the intruder. In addition, other pieces of lingerie and an address book had been taken from the residence. Though the book contained the names and phone numbers of several women, MM's address was only one of three listed.

Mr. Meirhofer's Version

Mr. Meirhofer admitted to the official version of this offense. He said that his motivation for entering the residence was to get money for methamphetamine. He denied that he had any sexual interest in the 13year-old boy who was in the residence at the time of the burglary.

Offense 3 (Suspect in this offense)

Official Version

- On 12/5/86 at 5:30 a.m., a 13 year-old female (JH) was sitting alone in the living room of her home in North Seattle. Her mother had left for work only a few minutes before. She observed a man come into her home carrying a knife and wearing a stocking over his head. She pretended to be asleep, hoping that the intruder would take what he wanted and leave without disturbing her. Instead, the man put his hand over her mouth and pressed a knife to her throat with enough force to leave a mark. After threatening her to remain silent, the intruder directed her to choose whether she wanted to go to her mother's bedroom or her own room where he intended to teach her to "suck cock." The intruder proceeded to tie her wrists together with telephone cord tightly enough to cut into her skin. He directed her to close her eyes and warned her to "stop looking at me or else I'll

have to kill you." He then pulled her shirt over her face to serve as a blindfold. The intruder took JH into her bedroom where he raped her vaginally. When she initially refused his directives, he began to yell, "Fuck me" and "Bitch" as he repeatedly struck her in the head. Afterwards, he forced her to fellate him, giving specific directions as to how to move her tongue and insisting that she swallow his semen after he had ejaculated. He then removed his penis from her mouth and rubbed it on her face. Finally, he forced her down to the floor, onto her hands and knees, and anally raped her. The intruder took his victim back into the living room where he tied her into a chair and left the residence. JH was able to untie herself and tried to call the police but the telephone line had been cut. She then ran to her aunt and uncle s nearby home and summoned help.

Mr. Meirhofer's Version

Mr. Meirhofer denied that he had any involvement in this offense.

Offense 4 (Suspect in this offense)

Official Version

- On 12/15/86, about one hour after the offense described above, against the 13-year-old female (JH), an unidentified man entered the home of a 13-year-old boy (RB) who also lived in North Seattle. RB's mother had just left for work, leaving RB and his 11-year-old sister, SB, alone in the apartment. At the time the man entered the apartment, RB had just finished dressing after taking a shower and SB was still asleep and her room. RB reported first noticing the intruder by foul odor in the living room. Then he saw the man who was wearing a stocking over his face. The man produced a knife and warned the boy that if he cooperated with him, he would not get hurt. He then took the boy back to his bedroom where he taped his hands behind his back and covered the boy's eyes with tape. After laying the boy down on his bed the intruder proceeded to undress him. The man fondled RB's genitals for a time and then rubbed something that felt like petroleum jelly on his anus before anally raping him. Reportedly, the man talked to the boy during the assault instructing him how to move around (e.g. how to position himself, and stroke his assailant's penis) and to apparently try to arouse the boy (telling him to imagine an attractive woman). He asked about R B's sister in the other room, though he was mistaken about her gender. He asked, "What time does your brother get up?" After finishing the rape the perpetrator collected some personal things belonging of RB and placed them into a bag that he had brought with him. At that time, SB opened the door and looked into the room. The assailant reportedly stated, "Get out. You're next." The girl ran for help and the intruder fled. When police investigated they found that the phone had been disconnected. Police records do not include a description of the subject in this case, though a composition drawing was made from SB's description (when she had looked into the room the perpetrator had his mask pulled up). She had described someone similar to the composite developed by SH.

Mr. Meirhofer's Version

Mr. Meirhofer said that he was charged with this offense but denied any involvement. He said that there was DNA evidence to indicate that he was not the perpetrator.

Offense 5 (Suspect in this offense)

Official Version

- On 4/11/86, JA (age 13) was sitting alone in the living room of his home. His mother had just left the house for work. A man wearing a ski mask walked in through the front door and grabbed the boy by the wrist. A struggle ensued and JA ended up on the floor. The man warned him that it would be easier and faster for him if he did not resist. The boy asked him what he was going to do, to which the man replied, "I'm going to suck your dick." He proceeded to take a piece of rope and tied the boy's wrists. Afterwards when the boy stopped struggling, the man removed the rope and took him to a bedroom. The man directed the boy to undress and he undressed as well. He directed the boy to get onto the bed where he fellated the boy. Following this, he lay on the bed and directed JA to sit on his penis. The boy complied and the man raped him. The man then directed the boy to lie on his stomach so he could anally rape him a second time. After doing this, the man lay on his stomach and directed JA to anally penetrate him, which he did. The man then allowed JA to dress and he also dressed, changing into clothes he had brought with him in a carry-bag. At some point during the assault, the man took off the ski mask and the boy recognized him as the person he had spoken to the previous evening while playing video games at a nearby convenience store. The man had walked JA home before telling him good night and going on his way. No suspect in the case was identified at the time. However, when Mr. Meirhofer became a suspect in 1987, police investigating another matter found him in possession of JA's student identification card. Mr. Meirhofer fit the general description JA had offered the police. In November of 1987 (some 18 months after the offense), JA attended a lineup that included Mr. Meirhofer, but was unable to make a positive identification.

Mr. Meirhofer's Version

Mr. Meirhofer admitted that he went to this boy's house and had sexual relations with the boy. However, Mr. Meirhofer provided a quite different version than the victim. Mr. Meirhofer depicted the boy as a willing participant. He said that he had met the boy the night before, and the boy had invited him to come over the next morning after his mother left for work. He said that he had told the boy he wanted to "suck his dick." While describing the offense, Mr. Meirhofer said, "We undressed at the same time ... he was eager and willing, had a full erection upon getting disrobed." He denied forcing the boy to sit on his penis and said "I sat on his penis." He said that he boy lied about what happened. He said that the boy might have been mad at him for stealing his bicycle the

night before, and this might have motivated him to lie. In general, Mr. Meirhofer provided a description of the offense that conflicted with the record.

Offense 6 (Suspect in this offense)

Official Version

- On 6/3/86 at approximately 8:30 a.m., JL (age 9) was waiting at a school bus stop in North Seattle. An unknown man drove up to him and asked the boy to help him with some kind of car problem. JL agreed and climbed into the front seat behind the steering wheel as directed. The man pushed the boy to the passenger s side and drove away. He pushed the boy down on the seat and directed him to cover himself with a shirt and blanket. After they had driven some distance, the attacker directed JL to undress. At one' point he showed the boy that he was armed with a pistol. The man stopped the car in a field that was surrounded by trees. The man directed JL onto his knees and after lubricating his anus, raped him. He then performed fellatio on the boy. When he had completed his assault, the man directed the boy to dress himself and they left the area. He returned to the original North Seattle neighborhood and freed the boy. Because of the similarity between this offense and other offenses for which Mr. Meirhofer had been charged, he became a suspect in this case. JL was unwilling to attend a lineup, which included Mr. Meirhofer, to see if he could identify a suspect.

Mr. Meirhofer's Version

Mr. Meirhofer denied any involvement in this offense.

Offense 7 (Suspect in this offense)

Official Version

- On 9/10/87, at approximately 7:50 a.m., ZH (age 10) was playing with schoolmates at the Stanwood Primary School when a strange man approached them. The man asked ZH's schoolmates to go into the school building and get some information about the school's teachers for him. As soon as they left, the man produced a small handgun and directed ZH into a waiting car. The man directed the boy to keep his head down so he would not be seen, and to undress as they drove along. They stopped in a secluded field where the boy was instructed to stand outside the car. The man rubbed petroleum jelly, suntan lotion, baby oil, and baby powder on the boy before anally raping him. In addition, the man performed fellatio on the boy. During the course of the assault, the man inserted flesh-colored balloons into the boy rectum and inflated them with some device, and by blowing into them orally. Afterward, the man directed the boy to dress and returned him to the neighborhood where he had found him. On 10/28/87, ZH made a positive identification of Mr. Meirhofer as his attacker from a police lineup. Because the boy had been hypnotized earlier in an attempt to help them

remember more details about his attackers vehicle ZH's identification was not allowed as evidence in any criminal charges against Mr. Meirhofer.

Mr. Meirhofer's Version

Mr. Meirhofer denied any involvement in this offense.

Mr. Meirhofer's Version from Current Interview

- Index offense - I admit kidnapping and attempting to anally rape the boy but I was unable to obtain an erection. Started to put police baton in his rectum but when the boy winced I stopped. I had planned it over two hour period. The part about fantasies of raping him was that I was asked during PSI evaluation in King County that I did have a fantasy one time but it did not work so I stopped having them.
- Offense 2 – admits crime but no interest in boy
- Offense 3 – denies
- Offense 4 – DNA exonerated him
- For the remaining offenses he denies any criminal behavior.

Treatment

Mr. Meirhofer completed substance abuse treatment at the Washington State Penitentiary in Walla Walla, WA. Mr. Meirhofer participated in sex offender day treatment for seven months at the Twin Rivers Correctional Center but indicated he had too much time to serve to be involved in the main SOTP. He admitted that he chose to complete a computer course when the administrators wanted him to start SOTP and he thought he could complete it later and he indicated that he was not allowed to return. Mr. Meirhofer refused to participate in treatment after being civilly committed because he did not want to admit to all the offenses in the record but just the ones he stated he committed.

Further Inquiry

Mr. Meirhofer was asked why he engaged in sexual offending behavior after not conducting himself that way as an adult. He stated, "feeling abandoned, lost in the drug world, not thinking. After being with the first 13 year-old I thought I would like the other boy also. I thought it would be pleasurable but it was not as I could not get an erection. I was not aroused by the nonconsenting part. It was to induce cooperation. I was not able to get aroused with the King county case. Mr. Meirhofer indicated he had difficulty applying alcohol treatment principles to his meth addiction as it was a whole lot more intense. When asked how he could have avoided engaging in his offenses he stated, "by avoiding drugs, this would have kept relationship intact and would not have ended up selling drugs in Seattle and let my world fall apart. When I got the idea that I was going

to do and thought about it instead of using drugs I would have redirected myself and realized that it was not a good idea." When asked who he blames for his activities he stated himself. With regard to substances he stated, "The drugs had a lot effect. I never would have done those things sober. It was my decision to take those drugs and I blame myself. I was not on the drugs heavy when I was with the thirteen year-old but I saw that as consensual even though I knew it was wrong. I had been around other street kids in Seattle who were about 15-16 and I had sex with them before."

Mr. Meirhofer stated that his crimes were spur of the moment most of the time. He added, "However some of it was planned when I thought about committing the Blaine crime for two hours. I was working up the courage to do such a thing that was not very courageous."

Factors that will keep him out of trouble in the future include, "support from family, friends and my own drive to be a productive member of society. I will be able to stay sober as I have no interest in taking drugs. I have heart condition and drugs will not be good especially meth. I take blood pressure medications and had a heart attack two years ago and had a stint put in."

Mr. Meirhofer was asked what affect his behavior had on his victims. He stated, "I totally messed them up. I was an adult and they were kids and they might be more inclined to abuse others. They likely have issues with trust. The victim that was kidnapped probably has nightmares given that he was awoken from his sleep. If I could talk to them I would tell then that I am sorry and I wish I could take it all back."

Mr. Meirhofer reported feeling remorse for his crime. He indicated it felt like a heavy feeling on his heart. He explained, "I know that I caused pain to somebody, emotional trauma."

Mr. Meirhofer denies being much of a liar through his life. He also does not believe he was a manipulator. When asked about having the ability of taking advantage of others or being accused of manipulation he stated, "no." Compared to others with regard to intelligence he feels about average but he feels he is a better cook than most.

Mr. Meirhofer is not satisfied with his life and stated, "I would change when I turned twenty-one years old and not spend so much time to the bars and eliminate the drinking and that would have changed everything. I never would have had conflict with my lover and not had DWIs and then I would not have searched out a replacement for alcohol and tried the meth and that lead to all the worse problems and decisions."

The happiest he has ever been was when he completed classes at WSP and his mother watched him graduate in cap and gown. The saddest he has ever been was when his parents divorced and when his partner and he departed ways. His main accomplishments are restoring a brick school house into a place to live and have an antique store. In prison taking education classes to better himself. His main failures are having an addictive personality and trying things and liked them even if they did not like him.

Mr. Meirhofer denies pornography was ever a problem for him and did not contribute to his offending behavior. He masturbates about once a month and thinks about the resident he is emotionally involved with at the SCC. Mr. Meirhofer was asked regarding paraphilic behavior and denies engaging in any.

Mr. Meirhofer was asked a series of questions regarding his understanding of relapse prevention. When asked about feelings or moods that could put him at you at risk of sexual offending again he indicated rejection. He would cope with these feelings by seeking out family members unlike last time. They will be able to help because they are great people who are willing to help. When asked about thoughts, including sexual thoughts or fantasies that would put him at risk of sexual offending he stated no. He denies being bothered by seeing teen boys.

Mr. Meirhofer indicated that situations or places he should avoid include bars, where drugs are prevalent. He noted, "I did not have a problem in the past being around teenagers but I would not interact with them to be safe." If he were to find himself in a situation or place that was risky for him he would leave.

Mr. Meirhofer was asked regarding setting up situations to offend. He described the following methods, "I had seen the boy at his house before in the yard."

Warning signs that he was setting up another situation would be if he took notice of where teen boys were living. If this occurred he would remember what happened before. Mr. Meirhofer was asked what individuals that would be most at risk for him and he stated, "I do not think anyone is at risk from me."

Mr. Meirhofer has told family and a friend in Bellingham about his past offending and they have volunteered to help him when released. He noted, "If I have to stay in WA I could live with a friend, Bill Charles in Bellingham with Bill Charles. No kids live there but a few llamas." When asked about excuses or justifications that he used to give himself permission to offend he noted he could not think of any excuses.

When asked on a scale of 0-10 (0=not likely 10=very likely) the likelihood that he would commit a future sex offense he rated himself a 0. He explained, "I have no desire to harm anyone, I don't want to return to prison. I have spent enough time away from family and trying to make a life for myself is more important than trying to do something like I did before. I am convinced the drugs were the key thing and I am not going to start that again so that decreases any interest to live that lifestyle."

Mr. Meirhofer was asked three questions for him to answer and return to me. Below are the questions and the answers he supplied.

1. How do you know you won't reoffend?

I know I won't reoffend because I realize that I have wasted 23 years of my life because of offending. I have matured a lot in those 23 years and I understand that any more offenses

will subject me to the 2 strikes for sex offenders or the 3 strikes law for other serious or violent offenses. The pain and anguish I have suffered is but a mere speck compared to what my victim and my family have endured. I will never have another victim and I will never put my family through another tortuous ordeal. Upon my arrival in prison I made a vow to myself to not succumb to the convict ways and attitudes. I was going to be successful and better myself. Instead of languishing away my time, I enrolled in school taking many college level classes, earning a spot on the honor roll numerous times. I earned two 90-credit degrees and a 60-credit certificate. Further, I held full-time kitchen job and learned the Cook position. I needed to have that $50.00 a month income to prevent myself from being a financial drain on my family. I put myself in that hole and I needed to dig my own way out of it. I owed that to my victim, my family and myself. I will never go to prison again because I will never commit any more crimes.

2. What have I learned?

I have learned that nothing is more precious than my freedom and the love and respect of my family and close friends. I have learned that while my family/s love for me is unconditional, their respect must be earned. I failed that prong 23 years ago but have not failed it since then and I will never fail it again. I have learned that if I get to a bumpy spot in life's road that my family is there to help me get through smoothly. I didn't reach out to them when I should have done so, but I will never make that mistake again. I have learned that drinking and taking drugs to cope with problems in my life does not work. It only leads to more problems. Suppressing bad feelings and inadequacies with drugs and alcohol only compound those feelings when they inevitably surface. What does work is sharing those feelings with friends and loved ones and gaining constructive criticism and advice from them. I learned it is also helpful to create some constructive catharsis mantra's to recite each day like you would a prayer. For instance, to tell yourself each morning that you area good person, you area valuable member of society, you can achieve whatever you set out to achieve, etc. In summary, I learned my lesson. I learned that society has rules and laws for good reasons, and they must be followed or there are consequences which can be severe.

3. How will you deal with society/adversity?

I have friends here if I have to remain in Washington initially and family in Montana if I can leave this state, who will help me re-integrate into the free world. I will have advocates wherever I am allowed to go. My actions will speak louder than words and over time a doubtful, cynical society will accept me back. If initially there is adversity to me being out, I believe that, as I just said, over time people will observe my actions and judge me objectively. Trust must be earned and that will be my focus, to re-earn society's trust.

Mental Status and Medical History

Mr. Meirhofer is a 57 year-old short, thin male (5 4" 139 lbs.) who presented with appropriate attire and hygiene. He was pleasant and cooperative and his speech was clear

and coherent. His affect was appropriate and mood was euthymic. He reported sleep and appetite were good and no difficulties with his ability to concentrate or focus. Mr. Meirhofer denied any symptoms of depression, anxiety, hallucinations or delusions. There was no evidence of a thought disorder. His medical history is positive for arterial blockage in his legs.

Previous Diagnoses

- 1996 - Anna Salter, Ph.D. as part of initial evaluation for commitment as an SVP

  Axis I: Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia Not Otherwise Specified — Nonconsent
  Amphetamine Dependence in a Controlled Environment
  Axis II: Personality Disorder Not Otherwise Specified (with Antisocial Features)

- 1998 - George Nelson, Ph.D., as part of a Commitment Evaluation:

  Axis I: Pedophilia, Sexually Attracted to Males, Nonexclusive Type Alcohol Dependency, in a controlled environment (Provisional) Amphetamine Dependence, in a Controlled Environment (Provisional) Cannabis Abuse (Provisional)

  Axis 11: Personality Disorder Not Otherwise Specified with Antisocial Traits (provisional)

- 2004 Annual Review by Lynn Sullivan-Saari, Ph.D.

  2005 Annual Reivew by James Manley, Ph.D.,

  2008 Annual Review by James Manley, Ph.D.

  Axis I: Pedophilia, Sexually Attracted to Males, Nonexclusive Type

  Paraphilia, Not Otherwise Specified (Nonconsent)
  Alcohol Dependence, in a Controlled Environment
  Amphetamine Dependence, in a Controlled Environment
  Noncompliance with Treatment
  Axis II: Personality Disorder, Not Otherwise Specified with Antisocial Traits

- 2008 - Evaluation by Richard Wollert, Ph.D.

Axis I:	No Diagnosis
Axis II:	No Diagnosis

- 2010 Annual Review by Robert Saari, Ph.D.

Axis I	Paraphilia, Not Otherwise Specified, Hebephilia Rule Out Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia, Not Otherwise Specified, Nonconsent
Axis II	Personality Disorder, Not Otherwise Specified, with Antisocial and Borderline Traits

Dr. Wollert, who conducted an annual review in 2008 on Mr. Meirhofer wrote "He does not meet the criteria for any of the paraphilic diagnoses. The paraphilic diagnoses included in the DSM-IV-TR were designed to be used as "short-hand labels" that only describe the behaviors, thoughts, and feelings of individuals who share selected sexual problems. It is therefore a mistake to invoke them as causal mechanisms in the absence of citing evidence that attests to this capacity. I am unaware of any evidence indicating that any of the Paraphilias "cause" the enactment of deviant sexual behavior..... In the absence of such evidence it seems equally plausible that Mr. Meirhofer misconducted himself for the reasons he gave me – that he was drug-affected, alienated, dispirited, and intent on having sex even though this would involve the use of force. Mr. Meirhofer's sexual offending is no less abhorrent because it occurred within the context of using drugs. All things considered, however, it was apparently motivated by a criminal frame of mind and life style rather than a paraphilia. To be classified as positive for a legally-defined mental abnormality or legally-defined personality disorder, Mr. Meirhofer must be positive for a conjoint set of elements that consists of (a) a paraphilia which (b) causes him to have serious difficulty controlling behavior that is sexually violent."

Dr. Wollert concluded the first element of the mental abnormality construct is absent. As well as the second element. Therefore, Mr. Meirhofer does not suffer from a legally-defined mental abnormality or a legally-defined personality disorder. Dr. Wollert pointed out that criteria for pedophilia (the diagnosis utilized to represent his mental abnormality requires the presence of "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children" for a "period of at least 6 months."

a. The DSM states that "those who frequently victimize children ... develop complicated techniques for obtaining access to children, which may include winning the trust of a child's mother, marrying a woman with an attractive child, trading children with other individuals with Pedophilia, or, in rare instances, taking in foster children from nonindustrialized countries or abducting children from strangers. Except in cases where the disorder is associated with Sexual Sadism, the person may be attentive to the child's needs in order to gain the child's affection, interest, and loyalty and to prevent the child from reporting the sexual activity. The disorder usually begins in adolescence."

b. The DSM does not indicate that Substance Intoxication increases the chances of suffering from Pedophilia. On the contrary, it indicates that evaluators should be careful to determine whether a paraphilic diagnosis is warranted when sexual misconduct occurs within a context where Substance Intoxication is also present. In particular, the Manual states that "In ... Substance Intoxication ... there may be a decrease in judgment, social skills, or impulse control that, in rare instances, leads to unusual sexual behavior. This can be distinguished from a Paraphilia by the fact that the unusual sexual behavior is not the individual's preferred or obligatory pattern, the sexual symptoms occur exclusively during the course of (the Substance Intoxication), and the unusual sexual acts tend to be isolated rather than recurrent and usually have a later age at onset."
c. Mr. Meirhofer does not meet the foregoing profile in that
   1. He has never had sexual contact with someone without public hair;
   2. He indicated during our interview that he has never masturbated to fantasies of having sex with someone without pubic hair;
   3. He does not have a history of recidivistic molestation, a point that was omitted from Dr. Manley's report;
   4. His sexual offending occurred during a period in his thirties when he was obviously abusing drugs on a regular basis;
   5. During our interview he denied ever having sexual contact with the child of a friend;
   6. During our interview he denied ever amassing a collection of Pedophilic pornography or soliciting children as pen pals

As mentioned above, Dr. Saari has ruled out pedophilia and has substituted the diagnoses of hebephilia.

The term hebephilia is used to describe the behavior a person engages in and does not imply that it is a mental disorder. It is specified to an adult who exhibits a sexual attraction to a post-pubescent females, although this would be contrary to the DSM-IV-TR text, which describes this diagnosis as being for sexual interests that are "less frequently encountered" than the listed paraphilias. Hebephilia is considered more as a group identifier or label[2] or descriptor than a mental disorder.

Zander[3] has written that civil commitment of sexual violent predators (SVP)[4] are based on two diagnostic categories- the paraphilias and the personality disorders –that are among the most controversial, and that have the most questionable validity, of all the mental disorders in the DSM. The problem of diagnostic validity in SVP cases is often exacerbated by the fact that many forensic examiners start with diagnoses with poor

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[2] United States v. Shields, 2009 U.S. Dist. LEXIS 11037 (D. Mass. 2008).

[3] Zander, T. (2005). Civil Commitment Without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis, *Journal of Sexual Offender Civil Commitment: Science and the Law*, (1), 17-82.

[4] The new generation of the civil commitment of sexual violent person/predator laws began in 1991 in Washington State. Since then, nineteen other states have passed similar laws which civilly commit certain high risk sexual offenders in a secure treatment setting.

validity and poor reliability, and they then decrease the diagnostic validity and reliability even further by using NOS categories and by dispensing with DSM-required criteria on the grounds that such criteria are mere guidelines.

Specific to this case, hebephilia has also been discussed by Zander. He cited Doren's[5] belief that the diagnosis of Paraphilia NOS, hebephilia is justified primarily by what he refers to as the impairment or consequences of the adult's sexual attraction to adolescents, not the sexual attraction itself. Zander questions if it is conceptually valid to label a behavior a mental disorder when it is primarily defined by the societal intolerance of it. Research has shown that one third of nonoffending men show sexual attraction to adolescent females.[6] Previously, Freund[7] compared non-offender males and non-offender females on their phallometric responses to stimuli depicting adult females, pubescent females, females 8-11, females 6-8, adult males, pubescent males, males 8-11, and males 6-8. He found that the homosexual males gave results that essentially duplicated those from their heterosexual counterparts: greatest reactions to adults, less (but still some) reactions to pubescents, still less to children 8-11, and so on. Neither the gay nor the straight men showed any reaction at all to individuals of the non-preferred sex (regardless of their age).

Zander referred to a comprehensive textbook[8] authored by 36 leading experts on sexual deviance and there was no mention of hebephilia or individuals sexually attracted to adolescents being the basis for such a diagnosis. In the latest edition of this book[9] published in 2008 dozens of paraphilias are listed, however the issue of hebephilia being a mental disorder is not addressed.

Zander cited Marshall's[10] findings from phallometric studies of sexual preference that he maintained adults who sexually assault adolescents should be considered diagnostically in the same way as adults who sexually assault other adults. Zander reported that Marshall's research-based distinction suggests that, in clinical and forensic practice, adult-pubescent sexual behavior "would not be diagnosable if it is mutual, even if it is not consensual" in the technical, legal sense that defines arbitrary age of legal consent.

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[5] Doren, D.M. (2002). *Evaluating sex offenders: A manual for civil commitments and beyond.* Sage Publications: London.

[6] Barbaree, H.E. & Marshall, W. L. (1989). Erectile responses among heterosexual child molesters, father-daughter incest offenders, and matched nonoffenders: Five distinct age preference profiles. *Canadian Journal of Behavioral Science*, 21, 70-82.

[7] Freund, K., Langevin, R., Cibiri, S., & Zajac, Y. (1973). Heterosexual aversion in homosexual males. *British Journal of Psychiatry*, 122, 163-169.

[8] Laws, D.R. & O'Donahue, W. (1997). *Sexual deviance: Theory, assessment and treatment*. New York: Guilford Press.

[9] Laws, D.R. & O'Donahue, W. (2008). *Sexual deviance: Theory, assessment and treatment*. 2nd Ed. New York: Guilford Press.

[10] Marshall, W. L. (1997). Pedophilia, psychopathology and theory. In D. R. Laws, & W. O'Donahue (Eds). *Sexual deviance: Theory, assessment and treatment* (pp. 152-174). New York: Guilford Press.

Franklin[11] has written a comprehensive overview of the history of hebephilia and its relevance regarding SVP proceedings. She noted the numerous problems with the diagnoses. These include:

> First, the DSM-IV specifically states what makes pedophilia a disorder is the existence of "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors" involving prepubescent child ("generally age 13 years or younger"). The implicit converse is that attraction to post pubescent children is not regarded as pathological.
>
> Second, sexual attraction to adolescents is not rare, as are all of the listed examples of paraphilia NOS. Indeed, it is significantly more common than pedophilia. Due to the commonplace nature of attraction to post pubescent children, it seems logical that the DSM authors would have specifically listed this condition if they had intended to pathologize it as a mental disorder. In his ruling against the use of hebephilia, the federal judge in Carta's case made that very point: [I]t is difficult to conceive why the DSM editors would limit examples of paraphilia NOS to rare sexual fixations such as coprophilia and klismaphilia if the category were intended to include a sexual interest as common as attraction to post-pubescent adolescents.
>
> Third, the concept of the paraphilias—explicitly based on cultural notions of normalcy—is widely critiqued as arbitrary, unreliable, imprecise, outdated, and lacking in scientific validity. Critics point out that the field trials for the paraphilias' initial inclusion in the DSM-III involved small numbers of cases that collapsed all sexual dysfunctions and paraphilias together, and no field trials were conducted for the DSM-IV. Moreover, changes made over the years had no rational or empirical basis, and did not reflect advances in scientific research or evidence-based clinical practice.
>
> Fourth, the ad hoc nature of any NOS category makes it impossible to study, in order to establish its scientific reliability and validity. The NOS specifiers in the DSM are widely regarded as "wastebasket" categories into which a heterogeneous "hodgepodge" of individuals is placed for lack of any more precise diagnosis. Poor interrater reliability and validity plague many established DSM categories. These problems are especially acute for residual conditions that are vaguely or inconsistently defined; most NOS categories have no research underpinning whatsoever, and the rates of error in categorization are unknown.
>
> Fifth, Doren's position that what makes hebephilia a pathology is not the presence of sexual attraction toward adolescents per se but, rather, "the degree" of such attraction is a dangerously vague standard for legal purposes, inviting arbitrary, inconsistent, unreliable, and potentially biased application. In other words, since some degree of sexual attraction to adolescents is considered normal, objectively

[11] Franklin, K. (2010). Hebephilia: Quintessence of Diagnostic Pretextuality. Behavioral Science and the Law. Online First.

> defining a point at which it becomes abnormal is an inherently subjective and nebulous endeavor.
>
> Finally, and perhaps most essentially, a new diagnosis should not emerge in the absence of empirical study and validation, on the basis of a training manual written for the explicit purpose of assisting in an adversarial endeavor. Moreover, experts differ as to the degree of sexual interest required for a diagnosis. Equally inextricable are the precise age range for adolescence and/or the specific level of physiological development that equates to biological maturity. Finally, "and most importantly," the judge discussed the "limited and scientifically problematic" research on the construct, most of it conducted by a single research group.

After my interview and review of records, in my opinion Mr. Meirhofer's diagnoses should be alcohol dependence and amphetamine dependence, remission in a controlled environment and personality disorder, NOS, with antisocial traits by history.

Assessing Risk:

Psychological tests have not been developed that allow evaluators to predict risk of future sexual offending behavior. Strengths and weaknesses need to be taken into account as well as historical factors to identify a person's relative risk. Factors would only allow conclusions about various groups and would not provide specific risks or probabilities for any individual. To assist in determining if an individual is at risk to commit another sex offense upon release, actuarial instruments have been generated. These instruments or checklists have a list of factors that are believed to be related to recidivism. The total score corresponds with a percentage that other individuals with the same score reoffended during a specified period of time (i.e., 5 or 10 years).

The Static-99 was developed in 1999 and has been used in SVP proceedings throughout the United States. In 2000, the original developmental norms were published. Since then there has been changes on the corresponding probability estimates.

Helmus[12] and colleagues have reported declines up to thirty percent when comparing 10-year follow-up between the old norms and the new norms with regard to the probability estimates for corresponding scores on the Static-99. They summarized the results of eighteen samples of sexual offenders ($N = 6{,}774$) drawn from different countries including Canada, the United States, New Zealand, United Kingdom and western Europe. In these samples, recidivism was defined as charges in about half of the cases and as convictions in the other half.

They reported these recent studies found that the ability of Static-99 to rank offenders according to relative risk is reasonably consistent across samples and settings, but the

[12] Harris, A., Helmus, L., Hanson, R. K., & Thornton, D. (2008). Are new norms needed for the Static-99. Presented at the 27th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Atlanta, Georgia, October 23, 2008

observed recidivism rates vary across samples. Specifically, the average recidivism rates associated with each score are lower in contemporary samples (1990s and more recent) than in the original developmental samples, who were primarily released during the 1970s and 1980s. Consequently, the developers of Static-99 recommend that the original norms be replaced by new norms based on samples that are more recent, more representative, and larger than the original samples.

They noted that research has also found that there is meaningful variation in the sexual recidivism rates based on factors not measured by Static-99. Samples that were preselected to be high risk (5 samples) show the highest recidivism rates, and routine samples from the Correctional Service of Canada (CSC; 5 samples) show recidivism rates substantially lower than the original developmental samples. Consequently, in order to evaluate the recidivism risk of an offender you need to consider the extent to which he resembles the typical member of the preselected high risk samples or the typical member of the CSC samples. The exact differences between the preselected high risk and CSC samples are not fully known; nevertheless, the following features are worth considering.

The Static-99 has been revised by altering one item that was specific to age. By changing this item, the developers are noting the most up to date findings with regard to age and sexual recidivism.

The reasons for the updating was from Helmus combining twenty-eight Static-99 replication studies and calculating Static-99R scores for twenty-three of these samples. The samples (n = 8,139) were drawn from different countries including Canada, the United States, United Kingdom, western Europe and New Zealand. In these samples recidivism was defined as charges in about half of the cases and as convictions in the other half. These recent studies found that although the ability of the Static-99R to rank offenders according to relative risk is reasonably consistent across samples and settings, the observed recidivism rates vary considerably across samples.

Research has also found that there is meaningful variation in the sexual recidivism rates based on factors not measured by Static-99R. Samples that were preselected to be high-risk/high needs (6 samples) show the highest recidivism rates, samples preselected based on treatment need (6 samples) had intermediate recidivism rates, and routine correctional samples had recidivism rates substantially lower than the preselected groups (and also lower than the recidivism rates in the original development samples for Static-99).

How to determine which group Mr. Meirhofer belongs in is the difficult question in the latest incarnation of the Static-99 and developmental norms. Does he resemble the typical member of the routine samples, or if he is more representative of the samples preselected for treatment or the high-risk/high needs samples? The exact differences between the four samples are not fully known but the following features have been identified as characteristics of the four sample types.

Routine Correctional Samples

This group consisted of eight samples of sex offenders from Canada, the United States, England, Austria and Sweden. These samples were relatively random (i.e., unselected) samples from a correctional system (as opposed to samples from specific institutions or subject to specific measures). In other words, they can be considered roughly representative of all adjudicated sex offenders. Some offenders in these samples would have been subsequently screened for treatment or other special measures (e.g. psychiatric admission or exceptional measures related to dangerousness), but these samples represent the full population of all offenders prior to any preselection processes. The recidivism norms for the unselected samples are the closest available to a hypothetical average of all offenders.

Preselected for Treatment Needs Samples

This group consisted of six samples of offenders referred for sex offender specific treatment during their current incarceration. If an offender is selected for treatment but does not receive it due to bed shortages he would still be considered preselected for treatment. It is the selection that defines this sample, not the participation in treatment. This includes referral for community sex offender treatment programs for any type of conditional release during the current incarceration or for non-custodial sentences. The quality of the treatment program, jurisdiction of the program, program structure (length or content), and the quality of the offender's participation in and completion of the program is not a consideration in the definition of this group. These factors would be taken into account by an evaluator outside of the Static-99R assessment. This sample is defined by the presence of treatment needs. Samples were categorized in this group if the treatment program was specific to sex offenders and offenders were referred for treatment during their current incarceration. Given the overlap in dynamic risk factors between sex offenders and general offenders, it is plausible that offenders referred to other (i.e., non-sex-offender-specific) treatment programs may be similar to this group. Additionally, offenders referred for treatment during previous incarcerations would also plausibly fit in this group given that at some point they were identified as having treatment needs warranting intervention. Applying recidivism norms from this group to offenders previously referred for treatment or referred for general treatment programs is therefore plausible, but would be based on inferences (as opposed to empirical data on Static-99R recidivism rates).

Preselected for High-Risk/High-Needs Sample

This would include a small minority of offenders selected from routine correctional populations on the basis of risk and need factors external to Static-99R. They were referred for services at forensic psychiatric facilities such as offenders referred as Mentally Disorder Sex Offenders, Sexually Violent Predators/Sexually Dangerous Persons, Incompetent to Stand Trial or Not Guilty by Reason of Insanity, or for treatment of a mental disorder (sexual or otherwise). It would include offenders referred to intensive treatment programs reserved for the highest risk offenders (not moderate

intensity treatment programs, or treatment programs offered to the majority of sex offenders). This would also include offenders identified as high risk through a quasi-judicial or administrative process examining a range of risk relevant characteristics such as sentence extensions for dangerousness (e.g., preventative or indefinite detention, treatment orders, denial of statutory release).

Non-Routine Correctional Sample

The non-routine group includes all samples of offenders preselected. It combines samples preselected based on treatment need, as well as those preselected as high risk/high need, and also includes a small number of offenders preselected in different ways that fit neither category (e.g., preselected based on offence severity). In some cases there may have been some measure of preselection and the offender would be most similar to either the preselection for treatment or pre-selection for high-risk/high-needs samples. If the amount of preselection is unknown and there is no strong evidence to differentiate between preselected for treatment and pre-selected for high-risk/high-needs then the non-routine sample norms are an option to determine recidivism rates.

The justification for using the recidivism rates from the preselected High-Risk/High-Needs sample type is that Mr. Meirhofer was preselected for sexually violent predator evaluation. However, this needs to be reconciled with his preselection for treatment.

What is important to be aware of is that there are individuals with high scores of the Static-99R represented in all samples. The developers have not made it clear why this is and how the individuals were placed in each sample.

On the Static-99R, Mr. Meirhofer's score of four places him in the high range relative to other sex offenders. On the Static-99R, if one is to compare Mr. Meirhofer to the pre-selected treatment sample and the high risk sample, then the ten year rate would be 18% and 29%, respectively[13]. Recently, in a Daubert hearing[14] in New Hampshire, Judge Abramson ruled that only the Routine Sample could be used by evaluators. If Mr. Meirhofer were compared to the Routine Sample, his score would correspond with an 8% recidivism rate over five years.

If one were to compare him to the total sample of almost 6000 subjects, his score would be comparable at a five year follow-up to 12%.

Most recently, a newer instrument, Static-2002R has been developed and is an extension of the Static-99. One desirable features of Static-2002R is that it is intended to assess some theoretically meaningful characteristics presumed to be the cause of recidivism risk (persistence of sexual offending, deviant sexual interests, and general criminality). On Static-2002R, an offender can be placed in one of eight risk categories based on their

[13] Mr. Meirhofer's score will be six in the next year due to losing a point from his age change. This will drop the percentages to 27-41% on this instrument

[14] State of New Hampshire v. Hurley No. 07-E-2036 – (NH. 4/22/10)

total score (ranging from 0-14). Mr. Meirhofer's score of five places him in the moderate range.

On the Static-2002R, if one is to compare Mr. Meirhofer to the non-routine sample and the high risk sample, then the ten year rate would be 25% and 28%, respectively[15].

If one were to compare him to the total sample of almost 2000 subjects, his score would be comparable at a five year follow-up to 15%.

Base Rates

The reason for the changes in probability estimates on the various studies that have been reported is due to base rates. Wollert[16] reviewed numerous studies in the United States and found 17,697 subjects had a weighted average reoffending rate of about seven percent over a five year period. They applied that base rate to a Static-99 sample previously used that was larger than the original Static-99 sample and found an approximate five-year reoffense rate of about 20 percent for scores of six or more. Mr. Meirhofer's score was five. This base rate issue as well as where the norms were developed and how they are applied has also been addressed by Helmus[17]. She wrote in her Masters thesis the following:

> These norms are more plausible than the original estimates simply because they are based on complete data from samples that are larger, more representative, and more recent. Although more plausible, these norms should not be adopted in all contexts without caution. Given that base rates showed such large variability across samples, evaluators cannot take for granted that any set of norms is going to apply to the context in which they are assessing risk. The variability across samples indicates that evaluators concerned about absolute recidivism rates cannot easily make reliable judgments about absolute risk based solely on Static-99 or Static-99R. General base rates and risk factors external to the measures should be incorporated to maximize the prediction of absolute recidivism rates. One option is for correctional systems to develop their own sets of norms.

Age Effect

Mr. Meirhofer last committed a hands-on sexually violent offense over twenty-three years ago. He is currently fifty-two years old. As a protective factor, the issue of age is

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[15] Mr. Meirhofer's score will be eight in the next year due to losing a point from his age change. This will drop the percentages to 41-46% on this instrument.

[16] Wollert, R. and Waggoner, J. (2009). Bayesian computations protect sexually violent predator evaluations from the degrading effects of confirmatory bias and illusions of certainty: A reply to Doren and Levenson (2009). Sex Offender Treatment, 4 (2009), 1.

[17] Helmus, L. (2009). Re-norming Static-99 recidivism estimates: Exploring base rate variability across sex offender samples. Masters Thesis.

significant. Research has shown that sexual recidivism decreases with advancing years.[18] Harris and Hanson[19] found age had a substantial association with recidivism, with all sex offenders older than age 50 at release reoffending at half the rate of the younger (less than 50) offenders (12% versus 26%, respectively) after fifteen years.

Hanson[20] has found that low, moderate and even high risk offenders showed declines in recidivism based on their advanced age. For example, when using the Static-99, recidivism rates were much lower for individuals in the 50-59 age group when compared to the developmental sample which had an average age of thirty-four. Mr. Meirhofer's risk would correspond to 19% over a five year follow-up.

Barbaree[21] reported the average sexual recidivism rate for 50 year-olds falls between 6% and 12%. Based on the data reviewed they concluded that when sex offenders are released from custody at different ages, they show age-related decreases in recidivism. Recently, Barbaree[22] summarized the most recent studies regarding the age invariance effect.

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[18] Barbaree, H., Blanchard, R. & Langton, C. (2003). The development of sexual aggression through the lifespan: The effect of age on sexual arousal and recidivism. In R. Prentky, E. Janus & M. Seto (Eds.) *Sexually coercive behavior: Understanding and management.* Annals of the New York Academy of Sciences: Volume 989.

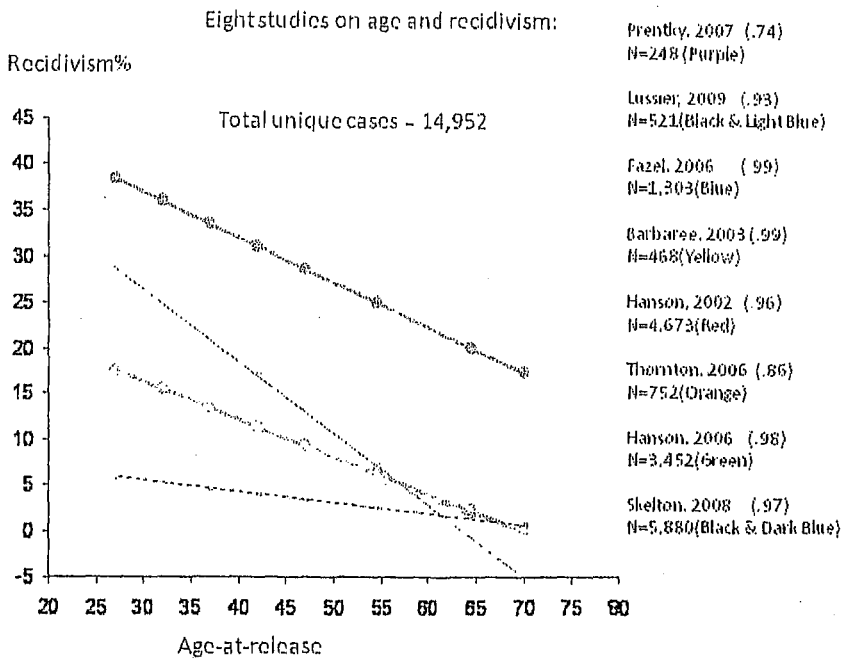
Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters.* Ottawa, Canada: Department of the Solicitor General of Canada. Retrieved from www.sgc.gc.ca

[19] Harris, J.R. & Hanson, R.K. (2004) Sex offender recidivism: A simple question. Solicitor of Canada website

[20] Hanson, R. K. (2006). Does Static-99 predict recidivism among older sexual offenders? *Sexual Abuse*, 18, 343–355.

[21] Barbaree, H. E. & Blanchard, R. (2008). Sexual deviance over the lifespan: Reductions in deviant sexual behavior in the aging offender. In D. R. Laws & W. O'Donohue (Eds.). (pp. 37–60). *Sexual deviance: theory, assessment, and treatment.* New York: Guilford.
Barbaree, H. E., Blanchard, R. & Langton, C. (2003). The development of sexual aggression through the lifespan. In R. A. Prentky, E. Janus & M. Seto (Eds.), *Sexually coercive behavior.* New York: Annals of the New York Academy of Sciences (Vol. 989)

[22] Barbaree, H. (2010). The Effects of Aging on Sex Offender Recidivism. Presented at the Department of Health Sex Offender Commitment Program. Seaside, CA.



Fazel et. al[23] also investigated the issue of sexual recidivism in older offenders. With their Swedish sample they found rates of recidivism were reduced, which replicates the aforementioned work in criminal justice and secure hospital settings in the United States, Canada, and the United Kingdom. Their sample consisted of 1303 sexual offenders who were followed for five years. They divided the individuals into four age bands. The age band of 40-54 year-olds rendered a recidivism rate of 5% for sexual offending and 15% for sexual and violent offences.

Prentky[24] has also investigated the issue of age with civilly committed high risk sex offenders. He found those in the age group of fifty and over had a recidivism rate of 20%.

Skelton[25] found an overall decrease in the rate of sexual re-offending over the age of fifty. With individuals in the 51-60 age range there was a 4% (31/754) sexual reoffense rate. For those who scored in the higher risk level based on actuarials, the rate rose to 19%.

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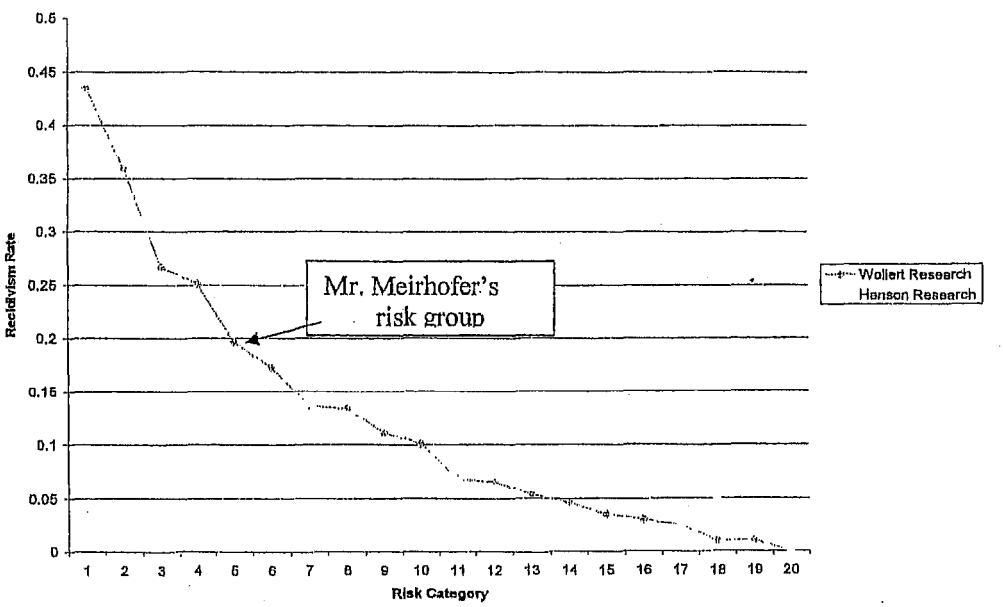
[23] Fazel, S., Sjostedt, G., Langstrom, N., & Grann, M. (2006). Risk factors for criminal recidivism in older sexual offenders. *Sexual Abuse: A Journal of Research and Treatment,* 18 (2), 159-168.

[24] Prentky, R. & Lee, A. (2007). Effect of Age-at-Release on Long Term Sexual Re-offense Rates in Civilly Committed Sexual Offenders. *Sexual Abuse: A Journal of Research and Treatment, 19, (1), 43-60.*

[25] Skelton, A. & Vess, J. (2008). Risk of sexual recidivism as a function of age and actuarial risk Journal of Sexual Aggression 14:3,199 — 209

Wollert,[26] in conducting a Bayesian approach to Hanson's data regarding age, found that a great deal of variation exists in the recidivism rates for sex offenders from different age groups, ranging from .27 for those who are youngest to .09 for those who are over 50. Wollert reported recidivism rates consistently decline with advancing age and the pattern of the decline in sexual recidivism with age parallels the pattern reported for more diverse offender samples, indicating that the age invariance theory applies to sex offenders. Wollert[27] and Waggoner et. al.[28] extended Wollert's earlier work and updated Hanson's Static-99 experience table that controls for the effects of age on sexual recidivism. They found similar findings with the age group of 50-59. Those in the medium-high risk range had a recidivism rate of 19.4.%.



The estimate of 19% is likely a reliable conservative long-term recidivism estimate that might be obtained from any actuarial.

The age issue was somewhat controversial with some disparate findings among researchers who have found evidence that for some high risk offenders the age invariance

[26] Wollert, R. (2006) Low Base Rates Limit Expert Certainty When Current Actuarials Are Used To Identify Sexually Violent Predators: An Application of Bayes's Theorem. Psychology, Public Policy and the Law, 12, (1), 56-85.

[27] Wollert, R. (2007). Validation of a Bayesian Method for Assessing Sexual Recidivism Risk. Presented in San Franciso at the 2007 conference of the American Psychological Association

[28] Waggoner, J, Wollert, R, & Cramer, E (2008). A respecification of Hanson's updated Static-99 experience table that controls for the effects of age on sexual recidivism among young offenders. *Law, Probability, & Risk,*

effect may not be present (i.e., Thornton[29]). However, the majority of the sex offender recidivism research has revealed a similar trend that age and general recidivism has long found robust findings of the age invariance effect. This effect has been present for many decades, for example, Hirschi and Gottfredson[30] summarized many cross-sectional studies showing that crime rates decreased with age for offender groups, who lived in different centuries, came from different countries, differed with respect to age and gender, and committed different types of crimes.

In summary, with regard to risk, the report has listed numerous risk percentages that could be applied to Mr. Meirhofer given his age and score on the actuarials. Based on his current status, the risk percentage is much lower than the statutory threshold regardless what study or interpretation of the instrument is utilized.

Other Factors

Another method for assessing risk for sex offender recidivism is the use of structured clinical ratings. One instrument developed for providing a structured clinical risk assessment for sexually violent recidivism, the Sexual Violence Risk-20 (SVR-20). This instrument provides a list of twenty variables believed to be associated with a higher risk of sex offense recidivism.

Of these twenty listed risk factors, Mr. Meirhofer is characterized to some degree by some of the factors:

- high density offenses
- substance abuse problems
- negative attitude toward intervention
- past non-violent offenses
- an escalation in frequency or severity of sex offenses
- minimization or denial of sex offenses

He does not appear to be characterized by the following factors:

- past supervision failure
- past non-sexual violent offenses
- physical harm to victims in sex offenses
- relationship problems
- psychopathy traits
- the use of weapons or threats of death in sex offenses
- victim of child abuse
- multiple sex offense types

[29] Thornton, D. (2006). Age and sexual recidivism in the middle years of life. *Sexual Abuse: A Journal of Research and Treatment*, 18 (2), 137-158.
[30] Hirschi, T. & Gottfredson, M. (1983). Age and the explanation of crime. *American Journal of Sociology*, 89, 552–584.

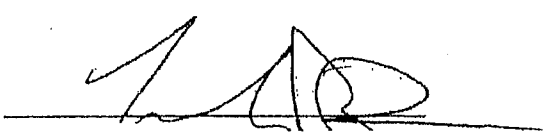
- deviant sexual arousal?
- suicidal or homicidal ideation
- attitudes that support sex offenses
- a lack of realistic future plans
- major mental illness
- employment problems

Overall, when using this measure, based on the majority of factors occurred in the distant past, Mr. Meirhofer appears to be characterized by a low-moderate likelihood of sexual recidivism.

Conclusions

Mr. Merhofer is an individual who was civilly committed in 2000 and has been confined at the SCC since 1996. He was incarcerated for nine years prior to SVP proceedings were filed. Mr. Meirhofer's sexual offending history began in his thirties after he became addicted to methamphetamine which led to the end of a thirteen year relationship with his partner. Mr. Meirhofer was convicted of one rape and kidnapping of a thirteen year-old boy and was a suspect in several other sexual offenses against young and teen boys. Mr. Meirhofer has admitted to the sexual offense for which he was convicted but denies those in which he was a suspect or was never charged. Mr. Meirhofer was found to be an SVP based on the diagnoses of pedophilia. The most recent annual review by Dr. Saari questions this diagnoses and feels there is a need to rule it out. He has supplemented that diagnoses with paraphilia NOS, hebephilia which as previously mentioned is questionable whether it exists as a mental abnormality as opposed to a descriptor of behavior.

I have been asked to address whether Mr. Meirhofer's mental abnormality has "so changed" as to whether he continues to meet the statutory definition of an SVP. As mentioned, recently the Washington State Supreme Court has ruled that the amendments of 2005 which restricted the definition of "so changed" should be reversed to pre-2005 standards. Therefore, it is my opinion that Mr. Meirhofer no longer meets the criteria of sexual violent predator based on the lack of evidence of a current paraphilic disorder as well as the low risk found on the actuarial instruments utilized.



Luis Rosell Psy.D.
Licensed Psychologist

APPENDIX E

SCANNED 3

FILED IN OPEN COURT
3-2 2011
WHATCOM COUNTY CLERK
By GB
Deputy

STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT

In re the Detention of: ALAN L. MEIRHOFER, Respondent.	NO. 96-2-01119-0 ORDER ON SHOW CAUSE HEARING

THIS MATTER came before the Court on March 2, 2011, to determine whether Respondent is entitled to a trial to determine whether he should be unconditionally released or released to a less restrictive alternative. At the hearing, the State was represented by Assistant Attorney General Tricia Boerger. Respondent was not present, but was represented by his counsel, Seth Fleetwood. In reaching a decision in this matter, the Court considered the pleadings filed in this matter, the evidence presented at the show cause hearing, and the argument of counsel. Based upon all of this, the Court enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent was committed to the care and custody of the Department of Social and Health Services (DSHS) as a sexually violent predator on May 22, 2000.

2. On April 28, 2010, DSHS submitted a written annual review of Respondent's mental condition to this Court.

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ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-6430

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter herein.

2. DSHS's annual review of Respondent's mental condition provides prima facie evidence of the following:

a. Respondent's condition remains such that he continues to meet the statutory definition of a sexually violent predator; and

b. Any proposed less restrictive alternative placement is not in the best interest of Respondent, nor can conditions be imposed that would adequately protect the community.

3. Pursuant to RCW 71.09.090(2)(a), and if In Re Detention of McCuiston remains law, Respondent did ~~not~~ present prima facie evidence that:

a. His condition has so changed that he no longer meets the criteria of a sexually violent predator; ~~or~~

But if the Supreme Court should reverse McCuiston, Respondent has failed to meet his burden.

~~b. Release to a less restrictive alternative is in his best interest, and conditions can be imposed that would adequately protect the community.~~

Based on the foregoing Findings of Fact and Conclusions of Law, the Court now enters the following: The Court shall grant the parties the opportunity to brief the issue of whether or not this annual review should be stayed until such time as the supreme court issues its' opinion on reconsideration, or whether this matter should be tried before such reconsideration opinion is issued under the pre-2005 statutory amendment to RCW 71.09.090.

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ORDER

IT IS ~~HEREBY~~ So ORDERED: ~~That this Court's order civilly committing the Respondent to the custody of DSHS as a sexually violent predator shall continue until further order of the Court.~~

DATED this 2 day of March, 2011.

THE HONORABLE STEVEN MURA
Judge of the Superior Court

Presented by:

ROBERT M. MCKENNA
Attorney General

for TRICIA BOERGER, WSBA # 38581
Assistant Attorney General
Attorneys for State of Washington

Copy received; Approved as to form:

SETH FLEETWOOD, WSBA # 22786
Attorney for Respondent

ATTORNEY GENERAL'S OFFICE
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

APPENDIX F

SCANNED 2

FILED
COUNTY CLERK
2011 JUN -8 PM 4:20
WHATCOM COUNTY
WASHINGTON
BY

STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT

In re the Detention of: ALAN L. MEIRHOFER, Respondent.	NO. 96-2-01119-0 ORDER GRANTING STAY PENDING MANDATE IN *MCCUISTION*

This matter came before the Court on June 2, 2011, for a hearing regarding Petitioner's request to stay Respondent's request for an unconditional release trial premised on *State v. McCuistion*, 169 Wn.2d 633, 238 P.3d 1147 (2010), which held that the 2005 amendments to RCW 71.09.090(4) are unconstitutional.

At the hearing, the Petitioner, State of Washington, was represented, telephonically, by Assistant Attorney General Tricia Boerger. Respondent was not present, but was represented by his attorney, Seth Fleetwood.

At the hearing, Petitioner moved for a stay based upon the Washington Supreme Court's withdrawal of its opinion in *State v. McCuistion*. Oral argument in *McCuistion* was heard by the Washington Supreme Court on May 12, 2011 regarding the State's Motion for Reconsideration in that case. To date, the Washington Supreme Court has not issued an opinion or mandate in *McCuistion*.

The Court, having reviewed the parties' briefing and supporting exhibits, and after considering the argument of counsel, finds that the standard to be applied to Respondent's petition

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for an unconditional release trial is uncertain at this time and most likely will be determined by the outcome of *State v. McCuistion* and the applicable standard will have a direct impact on this Court's decision to grant or deny Respondent's petition. As such:

IT IS HEREBY ORDERED that Respondent's petition for an unconditional release trial is stayed pending issuance of a mandate in *State v. McCuistion*.

DATED this 8 day of June, 2011.

THE HONORABLE STEVEN MURA
Judge of the Superior Court

Presented by:

ROBERT M. MCKENNA
Attorney General

TRICIA BOERGER, WSBA #38581
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APPENDIX G

SPECIAL COMMITMENT CENTER
ANNUAL REVIEW
(April 2010 to April 2011)

Name:	Alan L. Meirhofer
Date of birth:	04.07.53
Jurisdiction:	Superior Court of Whatcom County
Cause number:	96-2-01119-0
Commitment date:	05.22.00
Evaluated by:	Rob Saari, Ph.D.
Date of Report:	April 15, 2011

Reason for Referral

Mr. Meirhofer is a 58-year-old Caucasian man whose history includes recurrent sexually coercive and violent offenses against young boys with whom he had no meaningful prior relationship. On May 22, 2000, Mr. Meirhofer was committed to the Special Commitment Center (SCC) for care, control, and treatment of his sexually violent behaviors and mental abnormality in accordance with RCW 71.09.060 (1). Pursuant to RCW 71.09.070, the purpose of this report is to evaluate whether Mr. Meirhofer continues to meet the definition of a sexually violent predator and to assess whether conditional release to a less restrictive alternative is in his best interest and conditions can be imposed that would adequately protect the community.

Evaluation Process

At the Special Commitment Center, the annual review of a resident's treatment progress is a process in which clinical information is synthesized from multiple data sources to determine whether the person continues to meet criteria for civil commitment and, if so, their eligibility for a less restrictive alternative than total confinement. Documentation relevant to Mr. Meirhofer's current status in treatment was reviewed to gather clinical impressions on the extent and quality of Mr. Meirhofer's involvement in activities such as sex offender group therapy, specialty classes, and individual therapy. Additionally, Mr. Meirhofer participated in a clinical interview on April 14, 2011.

Relevant Background

Mr. Meirhofer's annual examination addressed his current functioning and progress toward achieving readiness for a less restrictive alternative. Therefore, the focus of the evaluation was not on obtaining historical information that has already been gathered by previous evaluators. Information about Mr. Meirhofer's psychosocial history is included in *Appendix A*. It would be helpful for the reader who is not familiar with Mr. Meirhofer's history to read this information first.

During Mr. Meirhofer's interview with me in 2010, he discussed his sexual offense history, motivations for sexual offending, and history of substance abuse. The following background information, taken verbatim from the 2010 annual review evaluation, includes a description of his offending history, his version of his offenses, his perspective on his sexual deviance, and his reported motivations for offending.

Offense History

Mr. Meirhofer's record of sexual offending was reviewed with him to obtain his version and perspective on his offenses.

Offense 1(Convicted for this offense)

Official Version

Rape in the 1st degree and Kidnapping 2nd degree. On 07.17.87, a 13-year-old boy from Blaine, Washington observed a man, who he later identified as Mr. Meirhofer (age 34), drive by his home while he was in the front yard. Sometime during the early morning hours of July 18th, the boy was awakened by Mr. Meirhofer, who was wearing a t-shirt that he had fashioned into a mask. He warned the boy to be quiet as he stuffed a piece of cloth into his mouth and secured it by wrapping tape around the boy's head several times. Mr. Meirhofer put a hunting knife to the boy's throat, warning him again not to cry out. He pulled the boy out of his bed, threw him over his shoulder, carried him out of the house, placed him into his car, and drove off. Eventually, he stopped the car and ordered the boy to undress. Mr. Meirhofer also undressed and fondled the boy's genitals, fellated him, and anally raped him. After the assault, they both dressed. Mr. Meirhofer drove the car around for a while longer, keeping the boy with him until the late afternoon. Before releasing the boy, Mr. Meirhofer warned him not to tell anyone and threatened to burn down the boy's home if he did.

When the victim's parents discovered in their son missing they attempted to call the police and discovered that their telephone line had been cut. Both the boy and his stepfather (who happened to see Mr. Meirhofer dropping the boy off) were able to record a partial license plate number from the car. Both were able to identify Mr. Meirhofer from a police lineup. While investigating this offense, police learned that Mr. Meirhofer had been renting a room from an associate.

Among Mr. Meirhofer's possessions, the police found several items belonging to his victim's family, as well as items belonging to victims of other burglaries and assaults. On 10.23.87, Mr. Meirhofer was arrested. Prior to his arrest, he led the police through Bellingham on a high-speed chase that ended in a car crash. After the crash, Mr. Meirhofer resisted police orders to exit his vehicle and had to be physically removed by police. Even then, Mr. Meirhofer offered a false identity. He was subsequently charged and convicted of Eluding a Pursuing Police Vehicle.

Mr. Meirhofer acknowledged abducting and raping his victim. His account of the crime was essentially the same as the boy's with one notable exception. While Mr. Meirhofer acknowledged having fellated the boy, he denied sodomizing him because of his inability to maintain an erection due to the amount of methamphetamine he had taken over the preceding day of the offense. Instead he had used the end of a small baton. "Like policemen have. It only went in a little bit, but it was penetration." (Per his 2007 admission during AR 2007 interview). He denied having any other sexual contact with other minors. Mr. Meirhofer denied having felt any sexual attraction to the boy prior to the offense, but thought somehow he would feel aroused when he committed the assault. Nevertheless, he has told previous evaluators that he had subsequently fantasized about the rape. Mr. Meirhofer was sentenced to 99 months in prison.

Mr. Meirhofer's Version

Mr. Meirhofer acknowledged that the above account was an accurate depiction of this offense. Later in the interview, he said that he had seen the boy in the boy's yard earlier that day. This was the first time

he had seen the boy. It was after seeing the boy in his yard that he decided to kidnap and rape him. He said that he planned the offense for a few hours before committing it.

Offense 2 (Convicted for this offense)

Official Version

Burglary in the 1st degree, Assault in the 2nd degree. During the afternoon of 12.04.86, a 33 year-old woman (SH) was studying in the basement of her home when she heard someone enter into the main floor of her residence. As it was about the time the 13-year-old son (Matthew) of her housemate (MM) to come home, she assumed that it was him. Later, after she discovered that Mathew had not come home and that her keys were missing from the upstairs area, she suspected that the noise she had heard had been a burglar. In addition, her housemate was missing a jewelry box. A police report was filed with the Seattle police. Because the keys to the residence were missing, it was decided that Matthew would sleep upstairs with his mother, while SH slept on the main floor. At approximately 2:45 a.m. the answering machine, (which had an alarm feature that activated when the phone line was cut) awoke SH. Immediately after that, she heard a key being inserted into the kitchen entrance of the residence. Investigating the sound SH saw a man, later identified as Mr. Meirhofer, attempting to open the door with her key. SH shouted at him hoping that he would retreat. Instead, he proceeded into the home and SH ran upstairs to warn the others. The two women and the boy took refuge in a room and used their body weight to block the door. Mr. Meirhofer had pulled on what appeared to be a stocking over his face and tried to force his way into the room. He warned them that he had a knife and a partner downstairs who had a gun. During the struggle Mr. Meirhofer's jacket became caught in the door-jam and he used his knife to cut himself free. Because the phone line had been cut from the outside of the house, the victims were unable to call for help. On his mother's instructions Matthew climbed out the window and ran to a neighbor's house for help. When the women told Mr. Meirhofer that Mathew had gone for help, he fled.

Mr. Meirhofer acknowledged his involvement in this offense but denied any sexual interest in Matthew. He explained that he had returned to the home because he hoped to find money in the wallets of the house's occupants. The police noted that Matthew would have normally been home alone during the time of the initial break-in.

During investigation of this incident the police learned that on 11.25.86, the home of a friend of MM's had been burglarized. The victim of that burglary (a single mother with two children) discovered that her lingerie had been gone through and had apparently been used for masturbation by the intruder. In addition, other pieces of lingerie and an address book had been taken from the residence. Though the book contained the names and phone numbers of several women, MM's address was only one of three listed.

Mr. Meirhofer's Version

Mr. Meirhofer admitted to the official version of this offense. He said that his motivation for entering the residence was to get money for methamphetamine. He denied that he had any sexual interest in the 13-year-old boy who was in the residence at the time of the burglary.

Offense 3 (Suspect in this offense)

Official Version

On 12.15.86 at 5:30 a.m., a 13 year-old female (JH) was sitting alone in the living room of her home in North Seattle. Her mother had left for work only a few minutes before. She observed a man come into her home carrying a knife and wearing a stocking over his head. She pretended to be asleep, hoping that the intruder would take what he wanted and leave without disturbing her. Instead, the man put his hand over her mouth and pressed a knife to her throat with enough force to leave a mark. After threatening her to remain silent, the intruder directed her to choose whether she wanted to go to her mother's bedroom or

her own room where he intended to teach her to "suck cock." The intruder proceeded to tie her wrists together with telephone cord tightly enough to cut into her skin. He directed her to close her eyes and warned her to "stop looking at me or else I'll have to kill you." He then pulled her shirt over her face to serve as a blindfold. The intruder took JH into her bedroom where he raped her vaginally. When she initially refused his directives, he began to yell, "Fuck me" and "Bitch" as he repeatedly struck her in the head. Afterwards, he forced her to fellate him, giving specific directions as to how to move her tongue and insisting that she swallow his semen after he had ejaculated. He then removed his penis from her mouth and rubbed it on her face. Finally, he forced her down to the floor, onto her hands and knees, and anally raped her. The intruder took his victim back into the living room where he tied her into a chair and left the residence. JH was able to untie herself and tried to call the police but the telephone line had been cut. She then ran to her aunt and uncle s nearby home and summoned help.

Mr. Meirhofer's Version
Mr. Meirhofer denied that he had any involvement in this offense.

Offense 4 (Suspect in this offense)
Official Version
On 12.15.86, about one hour after the offense described above, against the 13-year-old female (JH), an unidentified man entered the home of a 13-year-old boy (RB) who also lived in North Seattle. RB's mother had just left for work, leaving RB and his 11-year-old sister, SB, alone in the apartment. At the time the man entered the apartment, RB had just finished dressing after taking a shower and SB was still asleep and her room. RB reported first noticing the intruder by foul odor in the living room. Then he saw the man who was wearing a stocking over his face. The man produced a knife and warned the boy that if he cooperated with him, he would not get hurt. He then took the boy back to his bedroom where he taped his hands behind his back and covered the boy's eyes with tape. After laying the boy down on his bed the intruder proceeded to undress him. The man fondled RB's genitals for a time and then rubbed something that felt like petroleum jelly on his anus before anally raping him. Reportedly, the man talked to the boy during the assault instructing him how to move around (e.g. how to position himself, and stroke his assailant's penis) and to apparently try to arouse the boy (telling him to imagine an attractive woman). He asked about RB's sister in the other room, though he was mistaken about her gender. He asked, 'What time does your brother get up?" After finishing the rape the perpetrator collected some personal things belonging of RB and placed them into a bag that he had brought with him. At that time, SB opened the door and looked into the room. The assailant reportedly stated, "Get out. You're next." The girl ran for help and the intruder fled. When police investigated they found that the phone had been disconnected. Police records do not include a description of the subject in this case, though a composition drawing was made from SB's description (when she had looked into the room the perpetrator had his mask pulled up). She had described someone similar to the composite developed by SH.

Mr. Meirhofer's Version
Mr. Meirhofer said that he was charged with this offense but denied any involvement. He said that there was DNA evidence to indicate that he was not the perpetrator.

Offense 5 (Suspect in this offense)
Official Version
On 4.11.86, JA (age 13) was sitting alone in the living room of his home. His mother had just left the house for work. A man wearing a ski mask walked in through the front door and grabbed the boy by the wrist. A struggle ensued and JA ended up on the floor. The man warned him that it would be easier and faster for him if he did not resist. The boy asked him what he was going to do, to which the man replied, "I'm going to suck your dick." He proceeded to take a piece of rope and tied the boy's wrists. Afterwards when the boy stopped struggling, the man removed the rope and took him to a bedroom. The man directed

the boy to undress and he undressed as well. He directed the boy to get onto the bed where he fellated the boy. Following this, he lay on the bed and directed JA to sit on his penis. The boy complied and the man raped him. The man then directed the boy to lie on his stomach so he could anally rape him a second time. After doing this, the man lay on his stomach and directed JA to anally penetrate him, which he did. The man then allowed JA to dress and he also dressed, changing into clothes he had brought with him in a carry-bag. At some point during the assault, the man took off the ski mask and the boy recognized him as the person he had spoken to the previous evening while playing video games at a nearby convenience store. The man had walked JA home before telling him good night and going on his way. No suspect in the case was identified at the time. However, when Mr. Meirhofer became a suspect in 1987, police investigating another matter found him in possession of JA's student identification card. Mr. Meirhofer fit the general description JA had offered the police. In November of 1987 (some 18 months after the offense), JA attended a lineup that included Mr. Meirhofer, but was unable to make a positive identification.

Mr. Meirhofer's Version
Mr. Meirhofer admitted that he went to this boy's house and had sexual relations with the boy. However, Mr. Meirhofer provided a quite different version than the victim. Mr. Meirhofer depicted the boy as a willing participant. He said that he had met the boy the night before, and the boy had invited him to come over the next morning after his mother left for work. He said that he had told the boy he wanted to "suck his dick." While describing the offense, Mr. Meirhofer said, "We undressed at the same time ... he was eager and willing, had a full erection upon getting disrobed." He denied forcing the boy to sit on his penis and said "I sat on his penis." He said that he boy lied about what happened. He said that the boy might have been mad at him for stealing his bicycle the night before, and this might have motivated him to lie. In general, Mr. Meirhofer provided a description of the offense that was in significant respects inconsistent with the record.

Offense 6 (Suspect in this offense)
Official Version
On 06.03.86 at approximately 8:30 a.m., JL (age 9) was waiting at a school bus stop in North Seattle. An unknown man drove up to him and asked the boy to help him with some kind of car problem. JL agreed and climbed into the front seat behind the steering wheel as directed. The man pushed the boy to the passenger s side and drove away. He pushed the boy down on the seat and directed him to cover himself with a shirt and blanket. After they had driven some distance, the attacker directed JL to undress. At one point he showed the boy that he was armed with a pistol. The man stopped the car in a field that was surrounded by trees. The man directed JL onto his knees and after lubricating his anus, raped him. He then performed fellatio on the boy. When he had completed his assault, the man directed the boy to dress himself and they left the area. He returned to the original North Seattle neighborhood and freed the boy. Because of the similarity between this offense and other offenses for which Mr. Meirhofer had been charged, he became a suspect in this case. JL was unwilling to attend a lineup, which included Mr. Meirhofer, to see if he could identify a suspect.

Mr. Meirhofer's Version
Mr. Meirhofer denied any involvement in this offense.

Offense 7 (Suspect in this offense)
Official Version
On 9.10.87, at approximately 7:50 a.m., ZH (age 10) was playing with schoolmates at the Stanwood Primary School when a strange man approached them. The man asked ZH's schoolmates to go into the school building and get some information about the school's teachers for him. As soon as they left, the man produced a small handgun and directed ZH into a waiting car. The man directed the boy to keep his

head down so he would not be seen, and to undress as they drove along. They stopped in a secluded field where the boy was instructed to stand outside the car. The man rubbed petroleum jelly, suntan lotion, baby oil, and baby powder on the boy before anally raping him. In addition, the man performed fellatio on the boy. During the course of the assault, the man inserted flesh-colored balloons into the boy rectum and inflated them with some device, and by blowing into them orally. Afterward, the man directed the boy to dress and returned him to the neighborhood where he had found him. On 10.28.87, ZH made a positive identification of Mr. Meirhofer as his attacker from a police lineup. Because the boy had been hypnotized earlier in an attempt to help them remember more details about his attacker s vehicle ZH's identification was not allowed as evidence in any criminal charges against Mr. Meirhofer.

Mr. Meirhofer's Version
Mr. Meirhofer denied any involvement in this offense.

Acknowledgment of Sexual Deviance

In the 2010 annual review interview, Mr. Meirhofer failed to acknowledge that he has a problem of sexual deviance. He does not believe that he has any mental abnormality. When he was asked about how he made sense of the fact that he was civilly committed to the SCC, he answered, "I don't really." Although he denied having a problem of sexual deviance, he acknowledged that he had a problem with controlling his sexual behavior when he was last in the community and addicted to methamphetamine. He said, "When I was on drugs, I had a problem with all aspects of my life, and that was part of it, yes." He views his history of sexual offending as something of the past, a "horrible" mistake, but no longer a concern. He does not think he would be at any risk to sexually re-offend if he were released to the community.

Mr. Meirhofer acknowledged that he historically experienced a sexual attraction to boys around age 15 or 16, but he denied ever experiencing an attraction to prepubescent boys. Beginning in 1980 or 1981, he had sexual contacts with boys under the age of 16 years. He estimated that he had sexual relations with about 10 different boys with the youngest being 15 years old. Except for his known criminal offense history, he denied having any sexual relations with boys under the age of 15 years.

Description of Offense Motivations

In the 2010 annual review interview, Mr. Meirhofer said that his offenses were partly motivated by a wish for "sexual gratification." He explained that at the time he committed the offenses, he was addicted to methamphetamine and had poor hygiene. He described himself as dirty and unattractive, and commented, "I didn't think there was any other way I could have sex with anyone." Prior to the offenses, he said that his "ex-lover had thrown [him] out" and he was in a "drug stupor." He thought that somehow the people whom he and his lover knew would blame his lover for making him commit the offenses. He believed that they "would think it was his fault for the way he treated" him. He said that he felt "hurt and abandoned" by his lover, and "it seemed like if I committed this crime and got caught, our mutual friends would reject him, thinking it was his fault." Mr. Meirhofer added that using methamphetamine "made me do things that I wouldn't normally do," like "acting in a violent manner" and "stealing things." He acknowledged that at the time of his offenses, he was in a state of mind where he did not care about other people or about putting himself at risk.

Mr. Meirhofer did not communicate insight into the types of attitudes that led him to sexually offend. He denied that he was sexually preoccupied at the time of his offenses. However, he said that he was preoccupied with where he would get his next fix of methamphetamine.

Substance Abuse Issues

In the 2010 annual review interview, Mr. Meirhofer said that while he was in the community he had an alcohol abuse problem and a methamphetamine abuse problem. Up until 1982, when he received his second Driving Under the Influence (DUI) charge, he drank regularly to intoxication. He first noticed a loss of control over his alcohol intake when he was 25 years old. As his drinking progressed, he could reportedly drink up to a fifth of liquor in a few hours. He said that prior to quitting drinking in 1982 he experienced blackouts about every other time he drank. He said that in addition to creating legal problems for him, due to driving under the influence, his drinking caused him relationship problems as well.

Mr. Meirhofer was reportedly clean for a few years from 1982 to 1984 after his second DUI charge. During part of this time, he participated in court-mandated treatment for alcoholism. In 1984, he started using methamphetamine and quickly became addicted to the drug. He denied resuming alcohol use after starting to use methamphetamine. Up until his arrest in 1987, his methamphetamine addiction progressed and severely impaired his functioning. His methamphetamine use contributed to the loss of his relationship with his long-time lover. He said that his hygiene became quite poor, such that he was "dirty and disgusting." He resorted to stealing to support his methamphetamine habit. He reportedly stayed awake high on methamphetamine for as long as a week at a time and experienced hallucinations. Importantly, he said that he eventually had "no inhibitions about anything," and as mentioned, he reportedly committed his sexual offenses while under the influence of methamphetamine.

Mr. Meirhofer said in the 2010 interview that he has not participated in any substance abuse treatment work at the SCC. He said that he would not consider participating in substance abuse treatment because he is "not involved in any substances" and has "put all that behind [him]." I pointed out to him that he used substances a few years ago. He acknowledged that he had used. When I confronted with the fact that he had said, earlier in the interview, that using was a risk factor for him and he had chosen to use anyway, he said that when he used it "didn't seem to matter at the time" since he does not expect to "go anywhere" and considers the SCC "pretty much [his] home."

2011 Clinical Interview

Prior to the interview for this year's annual review, Mr. Meirhofer was informed about the limits of confidentiality and purpose of the annual review evaluation. After communicating that he understood the limits of confidentiality and purpose of the annual review evaluation, he agreed to participate in the interview.

Mental Status Examination

Mr. Meirhofer is a 58-year-old man whose physical appearance is consistent with his chronological age. He was dressed appropriately for the interview. His hygiene appeared adequate. He cooperated with the interview process. He answered interview questions with brief responses and did not spontaneously elaborate on his responses. His affect was euthymic, appropriate to thought content, and normal in range and intensity. He described his recent mood as "pretty good, I guess." His speech was fluent and grammatical. He was oriented to person, place, time, and situation. He denied perceptual abnormalities. There was no evidence of delusional thought content or other indications of a thought disorder. He denied experiencing thoughts of harming himself or harming other people. His attention and concentration were within normal limits. His memory was grossly intact. His intelligence appeared to be in the average range.

Daily Life at the SCC

Mr. Meirhofer currently has considerable free time, given that he is not currently working or participating in treatment. Up until late January 2011, he was working in the kitchen, but he was suspended from his job after he was discovered with "pruno" (i.e., homemade alcohol) in his room. He said that when he was

working, he liked his job and got along well with his supervisors and co-workers. During his free time, he likes to work on jigsaw puzzles and watch television. For exercise, he walks in the yard and works out with weights about three days a week.

Health Issues

Mr. Meirhofer reported that his main medical issue at this point is peripheral artery disease, which causes him discomfort in his legs. He is walking regularly to ameliorate this condition and sounded optimistic about the potential benefits of regular walking. A few years ago he had a heart attack, and he takes medications to reduce his cholesterol and lower his blood pressure. He is not taking any psychotropic medications and reportedly has not seen the SCC psychiatrist for treatment or consultation during this review period.

Sexual Functioning

Mr. Meirhofer described his sex drive as low. He denied experiencing any instances of sexual preoccupation during this past year. He estimated that he masturbates about twice a month and denied any instances of masturbating more than once in a day during this past year. He said that he usually fantasizes about another SCC resident when he masturbates. A few years ago he had sex with this resident and continues to be sexually interested in him. He denied experiencing any sexual fantasies about rape or underage boys during this past year. He said that he last masturbated to a fantasy about an underage boy before he was last incarcerated. He explained that the fantasy "didn't help me to masturbate" and reportedly "abandoned it."

Sex Offender Treatment

Mr. Meirhofer said that he is not interested in treatment. He does not believe that he has a psychosexual disorder and said that he "can't be treated for something" he does not have. He said that his history of raping boys was "a crime," not a mental disorder.

Mr. Meirhofer said that SCC does not "have a treatment program." He reiterated his opinion, a number of times, that there is "no treatment" at the SCC; however, when I asked him how he would determine if there was "treatment," he answered, "I suppose I wouldn't really have a way to determine that." He acknowledged that he really does not "know what they are doing" in the sex offender treatment groups. He said that he doubts he would benefit from treatment. When asked about the reasons for his doubt, he responded, "I don't really have a good answer for that." He did communicate that his negative opinion about the quality of treatment at the SCC has largely been informed by other SCC residents' complaints about treatment.

Mr. Meirhofer said that he did not discuss his sexual thoughts, feelings, or behaviors with any clinical staff during this past year. He reportedly has not completed an autobiography/sexual autobiography, written offense cycle, or relapse prevention plan. He reportedly has not worked with SCC therapists on understanding and developing interventions for his dynamic risk factors. He reportedly has not worked with therapists on identifying cognitive distortions related to his sexual offending. He has not participated in any SCC substance abuse treatment.

Mr. Meirhofer was asked if he had experienced any notable psychological changes in the past year. He answered, "I really don't know." When I asked him if he thought there was reason to think that he had become less likely to re-offend, in any way, during the last year, he responded, "I don't think I was ever at risk to commit another sexually violent offense since I have been here."

Substance Use

Mr. Meirhofer was asked about making pruno in December of 2010. He said that he was making the alcohol to celebrate the New Year and did not see any problem with making the alcohol, except for the fact that he got caught. Prior to making the alcohol, he reportedly did not consider the potential consequences or how it might negatively affect his chances of release from the SCC. When I asked him why it is important to refrain from drinking, given his history of offending while under the influence of substances, he said he did not believe it is important for him to abstain from alcohol. More specifically, he said, "Quite frankly, I never raped anyone when I was drinking, only when I was under the influence of methamphetamine did I do that."

Mr. Meirhofer pointed out an error in my last annual review about his substance abuse history. The error was that prior to 1984, he had a history of using amphetamines, not methamphetamine, and my doubts about his honesty with me about his reported history of methamphetamine use, prior to 1984, were unfounded.

Preparation for Community Placement

Mr. Meirhofer said he is not interested in receiving a less restrictive alternative placement. He said that he is not willing to accept conditions that might be placed on him by an outside treatment provider, a community corrections officer, or the Court. He is, however, interested in obtaining an unconditional release from the SCC. He reportedly has a place in Bellingham, Wa to live and considerable savings to assist him in transitioning to the community.

Mental Disorders

Mr. Meirhofer suffers from a number of mental abnormalities that predispose him to sexually re-offend. He has a clear history of sexual attraction to teenage boys under the age of 16 years. In his 2010 interview with me, he estimated that since he reached the age of majority, he had sexual relations with about 10 teenage boys. Although he has denied a sexual interest in prepubescent boys, he was a suspect in the rape of a 9-year-old boy and a 10-year-old boy. Thus, Mr. Meirhofer clearly has had a sexual attraction to minor-aged boys and repeatedly acted on this attraction by seducing and raping underage boys.

Mr. Meirhofer admits to aggressively kidnapping and raping one 13-year-old boy. He was convicted for this offense. He also admitted to the sexual abuse of another 13-year-old boy, but he claimed that the boy wanted the sex and denied using force. However, Mr. Meirhofer's account of the abuse is in stark contrast to the boy's account. The boys' account indicated that Mr. Meirhofer coerced, bound, and anally raped him, and the rape was similar in a number of respects to the rape of the other 13-year-old boy. These offenses occurred about a year apart.

The victims' report about the rape offenses, which he admits to committing, involved significant threat, coercion, and anal rape. In one case, the victim reported that Mr. Meirhofer bound his wrists. Mr. Meirhofer was a suspect in a number of other cases that involved forceful rape although he denies responsibility for these offenses. His history of sexual offending indicates an abnormal sexual object choice of underage boys and some evidence of a paraphilic arousal to rape.

Mr. Meirhofer has a significant history of serious alcohol abuse and methamphetamine abuse. In the 2010 interview with me, he described a pattern of substance abuse that substantially impaired his relationships with others, ability to work, and his judgment. While in the community, he was treated for substance abuse after his second DUI, but according to his records, he resumed using about a year after beginning court-ordered treatment. In the 2010 interview with me, he indicated that he started using methamphetamine after undergoing alcohol treatment in 1982. Prior to 1982, he reportedly used

amphetamines, not methamphetamine. He began using amphetamines at age 18, in 1971, and had an ongoing problem with amphetamine (and eventually methamphetamine) use throughout his adult life in the community. He used drugs to lure underage boys into having sex with him, and he said that his methamphetamine use significantly lowered his inhibitions and played a role in his rape of underage boys. Thus, methamphetamine use was a contributory factor to his sexual offending.

Mr. Meirhofer's behavioral history indicates a number of antisocial personality traits. While in the community, he engaged in a pattern of unlawful behavior. He was irresponsible insofar as he did not maintain stable employment, had periods of homelessness, and for many years lived off the resources of his lover, who was many years older than him. His criminal history indicates some degree of impulsivity and aggressiveness, and the nature of his sex offenses indicates a disregard for the safety of others. His lack of respect for others' safety and welfare is also apparent from his history of luring teenage boys to have sex with him through providing them with methamphetamine. Moreover, his records indicated that for a period of time, he mainly supported himself financially by dealing methamphetamine. My review of his records did not reveal that he has expressed guilt and remorse for his sexual crimes. In the 2010 interview with me, he discussed his sex crimes in a matter-of-fact manner. In describing one of his crimes, he justified and rationalized his behavior by describing the boy as sexually interested and aroused. In fact, he denied raping the boy and described him as a willing participant, who later lied about the nature of the sexual encounter to get back at him for stealing his bike. Not only did he show a lack of remorse but blamed the victim to some extent.

Mr. Meirhofer's history also indicates traits of borderline personality. In particular, his dependent relationship with his older lover, coupled with his sense of abandonment and then reckless, impulsive behavior after feeling abandoned, are consistent with borderline personality.

Diagnostic Opinions

Mr. Meirhofer's mental disorders were diagnosed based on the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (*DSM-IV-TR*). My DSM-IV-TR diagnoses include:

Axis I:	**Paraphilia, Not Otherwise Specified, Hebephilia** **Rule Out Pedophilia, Sexually Attracted to Males, Nonexclusive Type** **Paraphilia, Not Otherwise Specified, Nonconsent**
Axis II:	**Personality Disorder, Not Otherwise Specified, with Antisocial and Borderline Traits**

Commentary on Diagnostic Opinions

Mr. Meirhofer has a clear sexual attraction to pubescent boys who are underage and has acted on this attraction on numerous occasions. This is the rationale for the Hebephilia diagnosis.

Historically, Mr. Meirhofer has been diagnosed with Pedophilia. My opinion is that there is not sufficient evidence to indicate a clear pattern of sexual attraction to prepubescent boys. The main evidence, based on my review of his records, is the fact that he was the suspect in the rape of a number of prepubescent boys. However, he denies his involvement and denies ever experiencing a pattern of sexual attraction to prepubescent boys. Given that he was not convicted of these charges and denies an attraction to prepubescent boys, I do not think there is sufficient evidence to warrant a pedophilia diagnosis. Thus, I rendered a Rule Out Pedophilia diagnosis. A sexual history polygraph and plethysmograph testing may help clarify the full spectrum of his offense history and sexual arousal patterns. Although I do not think there is sufficient evidence to warrant the diagnosis at this time, I suspect that past evaluators were likely

correct in their diagnostic opinion and that full disclosure of his history of sexual fantasy and sexual behavior with minor would reveal the presence of a pedophilic disorder.

Mr. Meirhofer fully admits to the kidnapping and rape of the 13-year-old boy in July of 1987. He also admits to the sexual offense against the 13-year-old boy in April of 1986. As described above, Mr. Meirhofer depicted the sexual offense against the April 1986 victim as without coercion and in stark contrast to the victim's report of being grabbed, bound, and anally raped. My assumption is that the victim's report about the nature of the assault is accurate. These two rapes were over a year apart. Moreover, in the time span between these two rapes, there were a number of similar rapes of boys, and a girl, with a similar offense pattern. Mr. Meirhofer was a suspect in these rape cases. Thus, I believe there is a clear enough pattern of rape behavior to indicate a rape paraphilia (or Paraphilia, Not Otherwise Specified, Nonconsent).

Mr. Meirhofer's history of behavior in the community suggests a fairly classic presentation of Antisocial Personality Disorder. The only reason that I did not render a full diagnosis of Antisocial Personality Disorder is that there is not unequivocal evidence of a Conduct Disorder prior to age 15 years.[1] The fact of the matter is that he presents with the symptoms of Antisocial Personality Disorder as an adult, so functionally I think that Antisocial Personality Disorder is the most appropriate clinical conceptualization of his personality pathology. However, in keeping with the DSM-IV-TR diagnostic guidelines, I did not render a diagnosis of Antisocial Personality Disorder but rather a Personality Disorder, Not Otherwise Specified diagnosis with Antisocial and Borderline Traits.

Treatment Progress at the Special Commitment Center *(April 2010 to April 2011)*

Treatment at the Special Commitment Center (SCC) is designed to help residents understand the unique factors (i.e., dynamic risk factors) that place them at risk for re-offense so that they can develop skills that will allow them to avoid re-offense. Residents learn about the types of sexual attitudes, thought patterns and dysfunctional ways of coping that led to their offending behavior. This understanding can then be used to develop an understanding of their offense cycle, develop strategies to recognize when they are at risk, and learn to use these strategies outside of the treatment setting. Successful progress through the program is indicative of a resident's exposure to treatment concepts, developing knowledge of their unique risk factors, and ability to use this knowledge to manage their emotions and behavior.

Mr. Meirhofer did not participate in treatment during this review period. He did not participate in sex offender treatment group or in individual therapy. He did not work on completing any of the major programmatic requirements of the program, like his sexual autobiography or relapse prevention plan. He did not work with therapists on identifying his dynamic risk factors or developing interventions to manage his risk factors. There is no indication that he practiced intervening on the types of thinking, attitudes, and emotional states that precede his sexual offending behavior. He did not participate in any substance abuse treatment, which is an important component of risk management for him, given his history of severe substance abuse. In general, he did not participate in the types of treatment interventions that might mitigate his risk for sexual re-offense.

Since Mr. Meirhofer is a non-participant in treatment, he rarely interacts with SCC clinical staff. In his records for this review period, I only found one progress note that referenced a clinical encounter (Progress Note, 07-21-10):

[1] I suspect that there is simply an absence of information about his behavioral problems prior to age 15. It seems unlikely, although possible, that his behavioral problems suddenly emerged around age 15 years when he began to have a clear pattern of illegal arrest and criminal conviction.

I had a brief conversation with Mr. Meirhofer this day regarding his treatment plan. I informed him that I was working on his plan which had to be on file here and asked him if he wanted to have input on the process. He was pleasant and respectful in telling me that he was not interested in any way in treatment or his plan. I made sure that he understood that I was not trying to talk him into treatment but to make certain he was aware of the process and that he had options if he wanted them. He thanked me and declined any involvement in the process.

Mr. Meirhofer's behavior on his residential unit was generally good during this review period. He maintained good hygiene and kept his room clean. He got along reasonably well with SCC residential staff and socialized with other SCC residents. He enjoyed activities like watching football and doing puzzles. He worked in the kitchen and received excellent work evaluations during this review period.

Although Mr. Meirhofer generally followed SCC rules and policies, he had a few behavior management problems during this review period. Because of his inappropriate sexual behavior with two other SCC residents, a distance restriction was placed between him and these two residents (Current Conditions, 10-14-10, 01-05-11 & 03-01-11). Also, during a room search, he was discovered in possession of "pruno" (homemade alcohol), which, as mentioned, is a serious concern, given his substance abuse history (Behavior Management Report, 12-29-10). In addition to possessing pruno, Mr. Meirhofer was found in possession of adult pornography, located on his computer (Administrative Review Hearing Appeal, 02-01-11).

Sexual Violence Risk Assessment

Mr. Meirhofer's risk for sexual re-offense was evaluated by examining his score on an actuarial risk assessment instrument (Static-99R), reviewing his dynamic risk factors (changeable risk factors), and considering his participation in sex offender treatment.

Actuarial Risk Assessment: Static-99R

The Static-99R is a revised version of the Static-99. The major change in the Static-99R is that it better accounts for the risk factor of *age at release*. Additionally, the Static-99R provides new recidivism estimates based on different sample characteristics. Mr. Meirhofer's score was compared to the *Preselected for High-Risk/High Needs* sample. Sex offenders in this sample were comparable to Mr. Meirhofer in that they were referred for services at forensic psychiatric facilities (like the Special Commitment Center) and to intensive treatment programs reserved for the highest risk offenders. Mr. Meirhofer scored a 4 on the Static-99R. Mr. Meirhofer's score of a 4 is associated with a 5-year sexual recidivism estimate of about 20% and a 10-year sexual recidivism estimate of about 30%.

Dynamic Risk Factors

The main objective of sex offender treatment at the SCC is to address the psychological factors related to an offender's risk for sexual re-offense and to modify these through treatment. These factors include, for instance, beliefs and attitudes related to sexual offending, deficits in impulse control, and difficulties forming meaningful, mature relationships with other adults. The following dynamic risk factors are based on Mr. Meirhofer's self-report, clinical inferences made about Mr. Meirhofer's self-report, and information from his records[2]. This set of dynamic risk factors (italicized) is open to revision and not necessarily complete.

Mr. Meirhofer has a history of raping young teenage boys and there is some indication that he is sexually attracted to prepubescent boys as well (*Deviant Sexual Interests*). He has said that his offending was motivated by a wish for "sexual gratification" and at the time of his last offenses he was dirty,

[2] The following set of risks factors, and risk factor definitions, were derived primarily from the Stable-2000, which is a structured method for assessing dynamic risk for sexual re-offense.

unattractive, and not able to see "any other way [he] could have sex with anyone" (*Sexual Entitlement*). His last string of offenses was preceded by feelings of loss, hurt, and resentment toward his adult lover, and he was high on methamphetamine when he was committing the offenses (*Sexualized Coping*). In part, he last offended because he was feeling socially isolated and rejected (*Social Rejection/loneliness*) and was in a state of mind in which he did not care whether he harmed other people or put himself at risk (*Lack of Concern for Others*). In general, he lived recklessly as an adult and committed some of his offenses with little consideration of the consequences (*Impulsivity*). He used drugs, sold drugs, burglarized, and associated with other individuals living a similar lifestyle (*Negative Social Influences*). Since his civil commitment to the SCC, he has resisted treatment and refused to work on learning to manage his risk factors for sexual re-offense (*Poor Cooperation with Supervision*). He does not acknowledge that he has a psychosexual disorder or poses any risk for sexual re-offense (*poor self-assessment of risk*).

Mitigation of Risk through Sex Offender Treatment

As indicated, Mr. Meirhofer has refused to participate in treatment since his admission to the SCC. He has not participated in the types of treatment experiences that might affect a change in his mental condition, improve his capacity to manage his sexual behavior, and consequently reduce his risk for sexual re-offense. There has not been any appreciable mitigation of his risk for sexual re-offense through a positive response to sex offender treatment.

Summary of Findings

Mr. Meirhofer has assumed a stance that he does not have any psychological problems to address in treatment. He has a negative perception of the treatment program and does not believe that he can be helped by treatment. He has formed his negative perception not through personal experience in treatment but from what other SCC residents have told him.

With respect to Mr. Meirhofer's history of sexual offending, he attributes his sexual offending behavior to drug use and fails to recognize factors outside of drug use related to his offending. He seems blind to the fact that most people who use drugs, even potent drugs like methamphetamine, do not rape young teenage boys and although the drugs he used may have lowered his inhibitions, the drugs did not cause him to have deviant sexual interests and forcefully rape young teenage boys. In fact, he acknowledged to me in last year's annual review interview that he has a history of having sex with underage teenage boys prior to his string of offenses in 1986 and 1987, which is inconsistent with his position that his offenses were caused by his methamphetamine use. There is some indication from his records that his interest may also include prepubescent boys as well.

To date, Mr. Meirhofer has not undergone a sexual history polygraph assessment to assess the range of his offending and there is reason to believe, based on his depiction of his offenses (described above), that he continues to minimize and deny aspects of his sexual offending history. In general, I have doubts about whether he is entirely open and honest about his sexual offending history. I also have doubts about his willingness to be entirely honest about his current sexual drive, masturbatory habits, and sexual interests. He is generally guarded with personal information and does not have a history of providing much personal information beyond that which is documented in his records.

Mr. Meirhofer's alcohol use is a serious concern. He has a severe history of substance abuse that has impaired his functioning in the community. Prior to 1982, he drank alcoholically, experiencing a loss of control over his intake, drinking up to a fifth of liquor at a time, and experiencing blackouts about every other time he drank. Consequences from drinking included legal difficulties and relationship problems. After receiving a DUI in 1982, he reportedly stopped drinking but developed an addiction to methamphetamine, which caused him equally serious problems. Addiction to substances has been a major

mental health issue for him in the past. Now, he has assumed an attitude that drinking is not a problem, and he expressed no concern that drinking might place him at risk for sexual re-offense, or for relapsing to methamphetamine. In this year's interview, he did not communicate any insight into the degree to which substance use may elevate his risk for sexual re-offense.

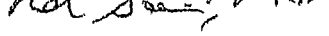
Another serious concern is Mr. Meirhofer's unwillingness to work cooperatively with supervisory requirements that might be placed on him. His attitude is that he is not willing to cooperate with any supervision, wants an unconditional release, and is at no risk for sexual re-offense. He did not convey any appreciation of his need to vigilantly monitor his thoughts and behavior to avoid sexual re-offense or to rely on professional psychological support to help him with transitioning to the community. Despite his history of poor adjustment to the community in the past, he believes that he is capable of returning safely to the community without treatment or professional help. His insight into his psychosexual problems and the risk associated with using substances is poor. To date, he has not acknowledged a problem of sexual deviance, developed a motivation to manage his risk factors, or worked with SCC clinical staff on developing interventions to manage his risk factors. During this review period, there has been no apparent change in his mental condition that would indicate a lowered risk for sexual re-offense.

Forensic Conclusions

Mr. Meirhofer has been found to meet the criteria of the RCW 71.09.020 as a Sexually Violent Predator, and was committed to the Special Commitment Center on May 22, 2000. Mr. Meirhofer was committed to the SCC because it was determined that he possessed mental abnormalities and/or a personality disorder which rendered him likely to engage in acts of sexual violence if not confined in a secure facility. His civil commitment, according to 71.09.060, is to continue under the care of the Department of Social and Health Services to ensure care, control and treatment until his condition has changed such that he no longer meets the definition of sexually violent predator or conditional release to a less restrictive alternative, as set forth in RCW 71.09.092, is determined to be in Mr. Meirhofer's best interest and conditions can be imposed that would adequately protect the community.

It is my professional opinion that Mr. Meirhofer appears to continue to meet the definition of a sexually violent predator. Mr. Meirhofer's present mental condition seriously impairs his ability to control his sexually violent behavior. Secondly, it is my professional opinion that Mr. Meirhofer's condition has not so changed such that conditions can be imposed that would adequately protect the community, and a less restrictive alternative would not, at the present time, be in his best interest. I do not recommend that the court consider a less restrictive placement for him at this time.

Respectfully submitted,



Rob Saari, Ph.D.
Washington State Licensed Psychologist
Forensic Services
Special Commitment Center

Appendix A: Psychosocial History Information

The following psychosocial history information was extracted verbatim from the Annual Review, dated July 9, 2009, authored by James Manley, Ph.D.

Social History

Mr. Meirhofer is the third of five siblings born to Clifford and Eleanor Meirhofer. As a boy, he attended Church Sunday School and a Christian Boy's Club. He denied alcohol abuse by his parents during their time together. In 1962, his parents divorced due to a "personality conflict." Mr. Meirhofer's father soon remarried a younger woman. Then, his father owned a Case Farm Machinery shop in Manhattan, Montana. Mr. Meirhofer's mother has been described in documents as "domineering."

Apparently, Mrs. Meirhofer did not accept the divorce well and blamed her son's adolescent behavior problems on his father's reported lack of attention. She described her son as "cheerful, good hearted, helpful, good natured, and cooperative but acknowledged his behavior had begun to deteriorate around age 14. An investigation officer for the Mr. Meirhofer's 1969 Burglary offense indicated that it appeared the mother was unaware of much of Mr. Meirhofer's problematic behavior and interactions with the police.

It is noted that Mr. Meirhofer's older brother, David, was arrested in connection with the murder of a number of people including three children in Montana during the period between 1967 and 1973. He confessed to four murders shortly before committing suicide in his jail cell. While not connected with the murders, Mr. Meirhofer has shown interest about his brother's offenses and had visited some of the murder sites.

Educational History

He described himself as an average student during elementary school and noted that he got along well with almost everybody. He denied getting into trouble at school or fighting with his peers. However, at the age of 15, he came to the attention of the juvenile authorities and spent most of the following six years either in a juvenile facility (Pine Hills School) or on the road, after escaping (twice).

Mr. Meirhofer reported completing his GED prior to being incarcerated. He has completed numerous college classes and reported receiving an Associate Degree in General Studies, with additional studies in the Arts and Sciences, from Edmonds Community College. Mr. Meirhofer also reported attaining a certificate in automated office/computer services.

While at the SCC, Mr. Meirhofer has participated in a number of college courses taught by Pierce Community College.

Vocational History

During his early adolescence, Mr. Meirhofer worked at odd jobs including delivering the daily newspaper and mowing lawns

During his residence at the Pine Hills School, Mr. Meirhofer worked on a harvest crew. His employer described him as "one of the best employees I have ever hired. He was willing to do any job that I asked of him. He did his work very well."

Historical documentation indicates Mr. Meirhofer had an extremely unstable lifestyle when not incarcerated. He was supported by his long-term lover Jim Raines, and by trafficking methamphetamine. At one point he rented a store to use as a front for selling drugs, but failed to pay the rent.

Mr. Meirhofer has consistently received positive work evaluations in various positions while at the SCC.

Substance Abuse History

Mr. Meirhofer has an extensive history of substance abuse. He began drinking alcohol as a young adolescent. While being incarcerated at the Pine Hills School curtailed his access to alcohol, he began drinking upon leaving the institution and experienced alcohol-related blackouts around age 21. He received two citations for Driving Under the Influence. After his second DUI, he was court-ordered to complete a two-year outpatient drug and alcohol treatment program. Reportedly, he was clean and sober for the first year, but returned to substance abuse prior to the end of the second year.

He began using marijuana and LSD at about age 21.

Mr. Meirhofer was first introduced to amphetamine when he was age 18, by Jim Raines. Eventually, other associates introduced him to methamphetamine and his use quickly escalated into a daily habit.

Mr. Meirhofer's ongoing drug and alcohol abuse caused conflicts between himself and Mr. Raines. Reportedly, his substance abuse led to their eventual break-up in 1984. Mr. Meirhofer then moved to Seattle and continued to use and sell methamphetamine. He had reported having a store he used as a front to sell methamphetamine for "about three years." Mr. Meirhofer indicated during those three years he steadily used methamphetamine. The first two years he had snorted the substance, and the last year he had injected it. Mr. Meirhofer indicated the longest he had stayed wake while on the drug was for about seven days. At that point he had been experiencing hallucinations and delusions.

Mr. Meirhofer also funded his drug usage via collecting social assistance, fencing burglarized items, and stealing car and home stereos.

Mr. Meirhofer has reported that at the time of his 1987 sexual offense he had been using methamphetamine for "three or four" days without sleep.

In 1994, Mr. Meirhofer completed a seven-week drug and alcohol treatment program while incarcerated with the Department of Corrections.

Sexual History

Mr. Meirhofer has reported having vague memories of engaging in sexual play with two older boys when he was about 10 years old. He said this consisted of the boys showing each other their genitals and engaging in fondling. At about age 12, he and a same aged neighbor boy engaged in mutual sexual activities. Also at age 12, he recalled kissing a girl. At about age 13 he began masturbating and indicated that during his youth and as a younger adult, he masturbated as frequently as 2 to 3 times daily, eventually decreasing to about once per week. He realized he was gay around age 13.

At age 16, Mr. Meirhofer ran away from reform school and was picked up by a man in his 20s. Mr. Meirhofer noted the man took him home and fellated him. At age 17, Mr. Meirhofer dated a girl and kissed her. He reported he was not then, or has ever been, sexually aroused by females. Related to this, Mr. Meirhofer has denied perpetrating the crime against the 13 year-old-girl (JH, see page 7). He claimed

DNA evidence had cleared him of the offense but that evidence had been ignored. Mr. Meirhofer reported that over the course of his life he had "maybe 10" male sexual partners, which included two prostitutes.

Mr. Meirhofer's longest relationship, with Jim Raines, lasted 13 years. In 1971, Mr. Meirhofer met (age 18) Mr. Raines (age 34) in California after his second escape from Pine Hills School. Mr. Meirhofer needed a place to live and traveled to Bellingham to cohabitate with Mr. Raines. Apparently, the relationship was not monogamous. Reports indicate Mr. Meirhofer brought home teen-age boys (approximately 15-years-old) on a regular basis, including a boy he brought from California to live with him for a time. Following Mr. Meirhofer's arrest in 1987, police found several photographs of adolescent males who were sleeping or in sexually suggestive poses among his possessions. During the 2006 interview with Dr. Putnam, Mr. Meirhofer claimed it was Mr. Raines who "brought people home." He stated he only brought home one 15 year-old boy. Mr. Meirhofer also indicated during his 2007 interview that Mr. Raines had brought people home to help around the store and the property.

Reports indicate Mr. Meirhofer has admitted deviant sexual fantasies and sexual activity with minor males. He has provided drugs to the teenagers in exchange for sex. Mr. Meirhofer has attributed the onset of his deviant sexual interest in minor males to his lover, Mr. Raines. Mr. Meirhofer has stated that Mr. Raines directed him toward sexual activity with young males in order to curb his alleged interest in older males thereby decreasing the probability of finding another love interest.

Juvenile Offense History

Mr. Meirhofer has an extensive juvenile offending history:

On 04.04.68, (age 14) Mr. Meirhofer stole a bottle of gin from a truck.

On 12.21.68 (age 15), Mr. Meirhofer broke into a bar and stole several bottles of liquor. He was placed on probation for this offense.

On 02.02.69, (age 15) he was charged with vandalizing a post office.

On 04.18.69, (age 16) Mr. Meirhofer and some other boys broke into a nightclub and stole a large amount of alcohol and some cash. As result of this and his prior violations he was sent to a juvenile residential facility, Pine Hills School. Mr. Meirhofer committed this offense and the two previous offenses while on probation for the 1968 Burglary offense.

On 07.11.69, (age 16) Mr. Meirhofer ran away from Pine Hills School and did not return until the following November. He reportedly traveled by catching rides on freight trains to California, and worked/lived there for part of this time.

On 02.08.71 (age 17), Pine Hills School records indicate Mr. Meirhofer was returned to the facility from aftercare due to another Burglary. Apparently, he had been released to aftercare in 1970, and was to be discharged from aftercare in January 1971, due to his enlistment in the Armed Forces, but was returned to Pine Hills school after accruing another Burglary charge (February 1971).

04.04.71 (age 17), Mr. Meirhofer again ran away from Pine Hills School. He was not returned to the facility and soon reached age 18.

Adult Offense History

In 1982, Mr. Meirhofer was arrested for Driving While Intoxicated and placed on probation. In 1984, Mr. Meirhofer was arrested the second time for DUI. Then, he was court ordered to two years out patient substance abuse treatment and placed on probation for this offense.

On 02.18.84, Mr. Meirhofer was arrested for shoplifting.

On 05.13.85, Seattle police responded to a call (1:50 a.m.) from an unidentified woman that a 14-year-old boy she knew had called her and had sounded disoriented. The police investigated the address of Mr. Meirhofer's business where they found him in the company of two adolescent boys. The boys were described as "obviously intoxicated on some type of narcotic or foreign substance." A search revealed one of the boys to be in possession of a hypodermic needle, a spoon, and a small pipe containing residue. While the police were questioning the parties involved, a third boy came to the door and addressed Mr. Meirhofer by name, but hurried away when he saw the police. Mr. Meirhofer had no explanation why these boys were at his place of business at that hour, or how they had gotten intoxicated and in possession of drug paraphernalia. No action was pursued in this matter.

On 11.05.85, Mr. Meirhofer received traffic citations for Negligent Driving and Driving with a Suspended License, apparently in association with a traffic accident.

On 01.31.86, Mr. Meirhofer was cited for driving without a license.

On 11.30.86, Mr. Meirhofer was charged with Suspicion of Narcotics. The police report on this matter also indicated that he was in possession of materials that suggested he had been involved in planning burglaries of several homes (e.g. invoices from a stereo store that included customer addresses and their purchases. Several notes had been written on the invoices such as "too far" and "already checked." No action was taken by the police regarding this evidence.

On 02.05.87, Mr. Meirhofer received a second citation for Driving with a Suspended License.

Institutional Adjustment History

During Mr. Meirhofer's juvenile incarceration at the Pine Hills School, his behavior and attitude were described as "excellent." It was noted he got along well with the other boys, and did not require redirection from staff. Nevertheless, he ran away from the facility in 1969 and again in 1971.

During his adult incarceration with the Washington Department of Corrections, Mr. Meirhofer received only one infraction, for failing to produce a urine sample for urinalysis on 08.13.95.

Sexual Deviance Treatment History

During July of 1993, Mr. Meirhofer was transferred to Twin Rivers Correctional Center in order to participate in the Sex Offender Treatment Program. He dropped out of the program after two days, citing religious and personal beliefs. In contrast, during his interview with Dr. Putnam, Mr. Meirhofer reported he had initially expressed interest in treatment at Twin Rivers, but it had conflicted with a computer course he had already been taking for nine months. When Dr. Putnam asked for clarification about "dropping out due to personal beliefs," Mr. Meirhofer explained he had not agreed to what was involved in treatment, including phallometric assessment.

Mr. Meirhofer's commitment evaluation, completed by Anna Salter, Ph.D., noted his attitude/interest toward sex offender treatment seemed to fluctuate depending on whether he perceived it would help him or hurt him avoid civil commitment as a sexually violent predator.

Mr. Meirhofer has steadfastly been a non-treatment resident while residing at the SCC.

History of Diagnoses

In 1996, Anna Salter, Ph.D. provided the following diagnoses in her Commitment Evaluation of Mr. Meirhofer:

Axis I:	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia, Not Otherwise Specified – Nonconsent Amphetamine Dependence in a Controlled Environment
Axis II:	Personality Disorder Not Otherwise Specified (with Antisocial Features)

George Nelson, Ph.D., offered the following diagnosis for Mr. Meirhofer as part of his 1998 Commitment Evaluation:

Axis I:	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Alcohol Dependency, in a controlled environment (Provisional) Amphetamine Dependence, in a Controlled Environment (Provisional) Cannabis Abuse (Provisional)
Axis II:	Personality Disorder Not Otherwise Specified with Antisocial Traits (provisional)

The following diagnoses were opined in 2004, by Lynn Sullivan-Saari, Ph.D., and again in 2005, by James Manley, Ph.D., as part of their Annual Reviews of Mr. Meirhofer.

Axis I:	302.2	Pedophilia, Sexually Attracted to Males, Nonexclusive Type Paraphilia, Not Otherwise Specified (Nonconsent) Alcohol Dependence, in a Controlled Environment Amphetamine Dependence, in a Controlled Environment Noncompliance with Treatment
Axis II:		Personality Disorder, Not Otherwise Specified with Antisocial Traits

APPENDIX H

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 FOR WHATCOM COUNTY
3

In Re the Detention of:	)	
	)	NO. 96-2-01119-0
ALAN MEIRHOFER	)	COA NO. 67932-5-I
	)	
Respondent	)	
	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 16th day of August, 2011, the above-entitled and numbered cause came on for hearing before the Honorable STEVEN J. MURA, one of the Judges of the Superior Court of the State of Washington for Whatcom County, sitting in Department No. 2 thereof, at the Whatcom County Courthouse, City of Bellingham, Whatcom County, Washington.

The petitioner appeared through TRICIA BOERGER, Assistant Attorney General, appearing telephonically;

The respondent appeared through SETH FLEETWOOD, Attorney at Law.

WHEREUPON, the following proceedings were had, to-wit:

1 the reasons why it may be appropriate to deny an expert
2 and the basis for my opposition in this case. That is,
3 we have an expert report from Dr. Rosell that I
4 believe, I may be wrong, but I believe it's dated in
5 2011. I believe it says it's January, it's not even
6 into February of 2011. So we have a report that's
7 barely six months old in a case like that where
8 Dr. Rosell indicates Mr. Meirhofer does not meet the
9 criteria for Dr. Rosell's reasons. That hearing has
10 been stayed by this court pending the outcome of the
11 McCuistion case which will allow us to figure out where
12 is the statute currently. The old statute under the
13 2005 amendments requires for change of treatment or
14 physiological change. That's currently the statute in
15 that case because the McCuistion opinion has been
16 withdrawn. But we don't know what the Washington
17 Supreme Court will do with that. So Dr. Rosell's
18 report is still out there, Mr. Meirhofer will still
19 have a chance to be heard on Dr. Rosell's report of
20 2011 once the McCuistion case is decided. Not only
21 that, Mr. Meirhofer is running on a parallel track of a
22 2008 July review in Skagit County with Judge Needy when
23 the case is transferred over there. Mr. Meirhofer will
24 be heard, once the McCuistion opinion is made by the
25 Washington Supreme Court. Not only, Your Honor, this

1 not only does he have that one, he has a second one
2 running at the very same time in Skagit County. So I
3 think in this case it may be appropriate to exercise
4 that discretion because you have such a recent report.
5 THE COURT: I'm going to refuse the appointment of
6 an expert at this time because of the closeness of the
7 report. However, Mr. Fleetwood, when the McCuistion
8 decision is made I will permit you the right to
9 petition, based upon the holding in that case, before
10 the next annual review for the appointment of an expert
11 to review the case in line with the direction given in
12 the McCuistion decision. So I'm not going to make you
13 wait a full year. But I'm not going to appoint at this
14 point in time.
15 Now, if there's something in McCuistion that can
16 give direction to an expert that Mr. Meirhofer should
17 have an opportunity to present expert testimony on, or
18 expert opinion on, then I will entertain that motion.
19 Okay?
20 MR. FLEETWOOD: All right. May we go to my second
21 motion, Your Honor?
22 THE COURT: Yes.
23 MR. FLEETWOOD: Which is the motion to continue.
24 Now that I have an answer on the question of the
25 appointment, and I was waiting for that information for

APPENDIX I

SCANNED 3

FILED IN OPEN COURT
10/10 20 11
WHATCOM COUNTY CLERK
By _____ Deputy

STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT

In re the Detention of: ALAN MEIRHOFER, Respondent.	NO. 96-2-01119-0 ORDER ON SHOW CAUSE HEARING

THIS MATTER came before the Court on October 10, 2011, to determine whether Respondent is entitled to a trial to determine whether he should be unconditionally released or released to a less restrictive alternative. At the hearing, the State was represented by Assistant Attorney General Tricia Boerger. Respondent was not present, but was represented by his counsel, Seth Fleetwood. In reaching a decision in this matter, the Court considered the pleadings filed in this matter, the evidence presented at the show cause hearing, and the argument of counsel. Based upon all of this, the Court enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent was committed to the care and custody of the Department of Social and Health Services (DSHS) as a sexually violent predator on May 22, 2000.

2. On April 15, 2011, DSHS submitted a written annual review of Respondent's mental condition to this Court.

ORIGINAL

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CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter herein.

2. DSHS's annual review of Respondent's mental condition provides prima facie evidence of the following:

a. Respondent's condition remains such that he continues to meet the statutory definition of a sexually violent predator; and

b. Any proposed less restrictive alternative placement is not in the best interest of Respondent, nor can conditions be imposed that would adequately protect the community.

3. Pursuant to *In re the Detention of Reimer*, 146 Wn.App. 179, 190 P.3d 74 (Div. II, 2008) and, *Detention of Petersen v. State*, 145 Wn.2d 789, 42 P.3d 952, 958 (2002), Respondent did not present prima facie evidence that:

a. His condition has so changed that he no longer meets the criteria of a sexually violent predator; or

b. Release to a less restrictive alternative is in his best interest, and conditions can be imposed that would adequately protect the community.

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Based on the foregoing Findings of Fact and Conclusions of Law, the Court now enters the following:

ORDER

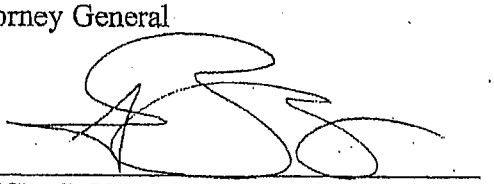
IT IS HEREBY ORDERED: That this Court's order civilly committing the Respondent to the custody of DSHS as a sexually violent predator shall continue until further order of the Court.

DATED this 10 day of October, 2011.

THE HONORABLE STEVEN MURA
Judge of the Superior Court

Presented by:

ROBERT M. MCKENNA
Attorney General



TRICIA BOERGER, WSBA #38581
Assistant Attorney General
Attorneys for State of Washington

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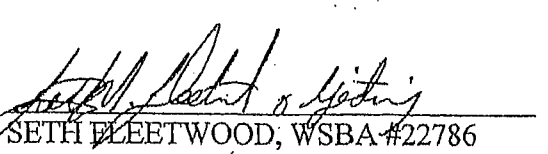

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APPENDIX J

SCANNED 15

FILED
COUNTY CLERK

2011 OCT -4 PM 1:53

WHATCOM COUNTY
WASHINGTON

BY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

In re the Detention of: ALAN L. MEIRHOFER Respondent.	**NO.** 96-2-01119-0 MOTION FOR EVIDENTIARY HEARING AND MEMORANDUM OF COUNSEL IN RESPONSE TO PETITIONER'S MOTION TO SHOW CAUSE

Motion

COMES NOW, the Respondent, Alan Meirhofer, by and through his attorney of record, Seth M. Fleetwood, and respectfully requests the court to grant Mr. Meirhofer a future evidentiary hearing at which the court would determine whether his condition has so changed that he should be unconditionally discharged or conditionally released to a less restrictive alternative. This motion is brought pursuant to RCW 71.09.090, State v. McCuistion, 169 Wn.2nd 633 (2010), In re Peterson, 145 Wn.2d 789 (2002), and the records and files contained herein.

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Procedural History

Mr. Meirhofer was committed to the Special Commitment Center (SCC) as a Sexually Violent Predator (SVP) after a jury verdict in Whatcom County on May 22, 2000. Mr. Meirhofer has not waived his right, pursuant to RCW 71.09.090(1), to petition the court for release. He is, therefore, before the court today on his 2011 annual review.

The "background" facts relied upon herein are those referenced by Meirhofer's previous experts and those facts summarized in the evaluation of the State's evaluator, Dr. Robert Saari, as it relates to criminal history and previous clinical analysis. Mr. Meirhofer hereby incorporates by reference, in this memorandum, those materials that make up the extensive file in this matter including, specifically, previous reports and pleadings filed on Mr. Meirhofer's behalf by counsel and by previous experts in support of past annual review petitions.

The most recent SCC annual review evaluator, Dr. Saari, filed an annual review report, on behalf of the State, on April 15th, 2011. Dr. Saari's 2011 report did not utilize any actuarial risk assessment tools to measure likelihood of re-offending. Although in his 2010 report he did score Mr. Meirhofer on the Static-99R and gave him a score of 4 which he found corresponds to a 5-year sexual recidivism rate of about 20% and a 10-year sexual recidivism estimate of about 30%.

Mr. Meirhofer was not entitled to appointment of an expert for his 2011 annual review pursuant to a pre-hearing decision by Judge Mura on August 16, 2011. However, Mr. Meirhofer's previous expert, Dr. Luis Rosell, Psy.D., did complete a report on January 22,

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2011 as part of Mr. Meirhofer's 2010 annual review. After thorough review of the records in this case and after conducting an in person clinical evaluation of Mr. Meirhofer he concluded that his diagnosis should be alcohol dependence and amphetamine dependence, remission in a controlled environment and personality disorder, NOS, with antisocial traits by history. At trial Dr. Rosell would testify, among many other things, that the notion of a "mental abnormality" is a legal construct and not recognized in the DSM; additionally he believes that this diagnosis does not make him likely to commit future acts of sexual violence. Dr. Rosell concluded that application of the Static-99R results, under any construction, in a dramatically lower than 50% likelihood of re-offending and he noted that his reduced likelihood of re-offending is attributable, in part, to advanced age, something universally accepted as a factor in reduced recidivism. *See Dr. Rosell report at page 21.*

ARGUMENT

The State's expert maintains that Meirhofer suffers from two mental abnormalities; Hebephilia and Personality Disorder. See page 10 of his 2011 report. He no longer maintains that Meirhofer suffers from Pedophilia. However, Dr. Allen Frances, MD, in an article published in The Journal of the American Academy of Psychiatry and the law, has expressed the opinion that Hebephilia "is not an accepted mental disorder that can be reliably diagnosed and should not be treated as such in SVP proceedings". *See Exhibit A attached hereto, page 85.* In addition, Dr. Frances has written in the Psychiatric Times his belief that Personality Disorder with anti social traits should not be recognized as a mental abnormality for purposes of diagnosing SVPs because, primarily, it fails to satisfactorily distinguish itself from mere

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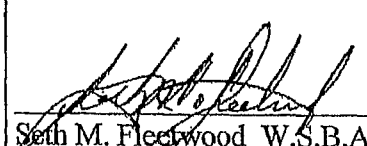
criminality. See *Exhibit B attached hereto, page 2.* Dr. Frances has indicated a willingness to testify on Mr. Meirhofer's behalf. Both observations by Dr. Frances is evidence which constitutes sufficient grounds to warrant an evidentiary hearing based on In Re Peterson as has been thoroughly briefed in previous submissions.

CONCLUSION

Probable cause exists to warrant a new trial under 71.09.090 as Mr. Meirhofer has made a prima facie showing that he no longer meets the definition of a sexually violent predator due to the following factors; 1. The State's last analysis using an actuarial risk assessment tool concluded he was at less than a fifty percent likelihood of re-offending; 2. The report submitted by Dr. Rosell indicates, among other things, that he is at a less than fifty percent likelihood of re-offending; and 3. The articles authored by Dr. Allen Frances articulate why the State's diagnosis of mental abnormality are inaccurate. Based on the foregoing, and past reasons expressed in the lengthy record of this case, we respectfully request that Mr. Meirhofer be granted an evidentiary hearing.

Dated this 27th day of September, 2011.



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Hebephilia Is Not a Mental Disorder in DSM-IV-TR and Should Not Become One in DSM-5

EXHIBIT "A"

Allen Frances, MD, and Michael B. First, MD

The paraphilia section of Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) is being misinterpreted in the forensic evaluations of sexually violent offenders. The resulting misuse of the term paraphilia not otherwise specified, hebephilia, has justified the inappropriate involuntary commitment of individuals who do not in fact qualify for a DSM-IV-TR diagnosis of mental disorder. This article has two purposes: to clarify what the DSM-IV-TR was meant to convey and how it has been twisted in translation within the legal system, and to warn that the DSM-5 proposal to include pedohebephilia threatens to make the current bad situation very much worse in the future.

J Am Acad Psychiatry Law 39:78–85, 2011

Twenty states and the federal government have passed statutes that allow for the involuntary psychiatric commitment of sexually violent predators (SVPs) to begin after their prison sentence has already been served. These statutes were passed as a public safety measure in response to egregious sexual offenses committed shortly after release by former prisoners who had received relatively short sentences. Central to all the statutes is a requirement that the SVP offender be diagnosed with a mental disorder or abnormality. The five to four Supreme Court ruling in *Kansas v. Hendricks*[1] that narrowly supported the constitutionality of SVP statutes rests completely on a presumed ability to distinguish individuals who are mentally disordered from those who are common criminals. Otherwise, the continued involuntary incarceration would clearly represent double jeopardy and a denial of due process. There is no constitutional justification for continued preventive retention once a prison sentence has been served, unless dangerousness is specifically caused by mental abnormality.

The Supreme Court ruling does not require that the qualifying mental abnormality be a Diagnostic and Statistical Manual of Mental Disorders (DSM)-defined disorder, but in actual practice, evaluators invariably use one or another of the DSM categories to justify their findings. Although it varies from state to state, the two most commonly used DSM diagnoses to justify involuntary commitment are generally pedophilia and paraphilia NOS (most often NOS, nonconsent, but more recently also NOS, hebephilia).[2,3] There has been some, but limited, controversy about the suitability of pedophilia,[4,5] but it is generally accepted within the field as a qualifying DSM-IV-TR mental disorder. The grounds for accepting paraphilia NOS as a qualifying mental disorder are much shakier.

In the first half of this article, we discuss the current misuse of the concept paraphilia NOS, hebephilia, in involuntary SVP commitments. In the second half, we discuss the weaknesses of the DSM-5

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Disclosures of financial or other potential conflicts of interest: Dr. Frances was chair of the DSM-IV Task Force and has provided testimony on behalf of the defense in SVP commitment cases. Dr. First was editor of text and criteria for DSM-IV and editor and co-chair of the DSM-IV-TR, and has performed forensic evaluations on behalf of the defense in SVP commitment cases.

proposal for a new diagnosis of pedohebephilia and its detrimental consequences.

The Misuse of the Diagnosis Paraphilia NOS, Hebephilia

Although it was first mentioned 100 years ago, hebephilia has sprung into sudden prominence only because of its recent use in forensic proceedings.[6] The term hebephilia has been used to provide a mental disorder diagnosis for those SVP offenders whose targeted victims are pubescent, not the prepubescent targets of pedophilia. The numerous conceptual problems with the diagnosis of hebephilia and the extreme limitations of its research base have already been well described by authorities in the sexual disorders field.[7–15] This background has not prevented hebephilia (in the official sounding guise of paraphilia not otherwise specified, hebephilia) from being misused as a qualifying diagnosis in legal proceedings, to justify what often becomes a lifelong involuntary psychiatric commitment.

We will attempt to correct the misunderstandings that are shared among many SVP evaluators about the DSM-IV-TR paraphilia section. These misunderstandings result in part from the imprecise DSM-IV-TR wording, which is best understood by reviewing how paraphilia was defined in DSM-III[16] and how and why the wording was changed in DSM-III-R,[17] DSM-IV,[18] and DSM-IV-TR.[19]

DSM-III, which first introduced the term paraphilia, noted that "the essential feature of disorders in this subclass is that unusual or bizarre imagery or acts are necessary for sexual excitement" (Ref. 16, p 266). The text then went on to offer some examples of what would constitute unusual or bizarre imagery or acts, explaining that they "generally involve either: (1) preference for use of a nonhuman object for sexual arousal, (2) repetitive sexual activity with humans involving real or simulated suffering or humiliation or (3) repetitive sexual activity with nonconsenting partners" (Ref. 16, p 266). Because of concerns about the subjectivity and unreliability of the terms unusual and bizarre in the definition, these terms were omitted from DSM-III-R (Robert Spitzer, personal communication, July 8, 2010), leaving only the list of examples that were modified to mention "children" specifically, alongside "other nonconsenting persons." Notably, the sentences explaining the etymology of the word paraphilia were retained: "In other classifications these disorders are referred to as Sexual Deviations. The term Paraphilia is preferred because it correctly emphasizes that the deviation (para) lies in that to which the person is attracted (philia)" (Ref. 17, p 279).

Those preparing DSM-III-R understandably did not anticipate that many years later their truncated definition of paraphilia would be placed under intense scrutiny and have such consequential impact in the context of sexually violent predator commitment hearings. The DSM-III-R listing of eight specific paraphilias, along with the inclusion of seven other patently abnormal examples in the NOS section (e.g., necrophilia (corpses), zoophilia (animals), and coprophilia (feces)), was thought to be sufficient to communicate to clinicians the variety of sexual arousal foci considered to be paraphilic. Subsequent editions have similarly failed to provide a general and abstract definition of what makes a particular sexual arousal pattern paraphilic. Nonetheless, the underlying principle governing inclusion in this category is that a person's focus of sexual arousal be considered deviant, bizarre, and unusual.

In our roles as Chair of the DSM-IV Task Force and its Editor of Text and Criteria, we must take responsibility for its insufficiently clear wording that has allowed the misuse of the Paraphilia section in SVP hearings. We did not anticipate the later forensic misuse of the section and dropped the ball by retaining the vague DSM-III-R wording that did not include anything approaching a clear and coherent definition of the overall concept of paraphilia. The boundaries of the term paraphilia are admittedly extremely difficult to define precisely, but in retrospect we should have provided more guidance and less room for the loose usage now found in SVP proceedings.

We will annotate the wording of the three introductory sentences in the DSM-IV-TR Paraphilia section, in an attempt to clarify the original intent of DSM-III, DSM-III-R, and DSM-IV and reduce the confusion caused by the unfortunate ambiguity in their wording. We chose these three sentences because they have been the most misinterpreted in forensic settings to justify the inappropriate use of the paraphilia NOS category. We hope that this insider's parsing of the intended meanings will help to set the record straight and prevent their further misuse in SVP proceedings.

Essential Features of a Paraphilia

Much has been made in legal settings of the wording of the opening sentence of the DSM-IV-TR Paraphilia section: "The essential features of a Paraphilia are recurrent, intense, sexually arousing fantasies, sexual urges, or behaviors generally involving 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons . . ." (Ref. 19, p 566). This wording is clearly inadequate as a definition, but the sentence was not rewritten during the DSM-IV revision process because never in our wildest dreams did we foresee that it would be misconstrued in legal proceedings to be an operational definition of what types of sexual arousal foci fall within the diagnostic construct of a paraphilia. The opening sentence is meant as no more than a kind of table of contents to the eight specific disorders covered later in the section, sorting them roughly by the type of deviant sexual arousal into seemingly convenient groupings: nonhuman objects covered two categories (fetishism and transvestic fetishism); suffering and humiliation covered an additional two categories (sadism and masochism); and children and other nonconsenting persons covered the remaining four categories (pedophilia, exhibitionism, voyeurism, and frotteurism).

The sentence was never meant to be taken out of its introductory context and treated as an authoritative and stand-alone legal definition of paraphilia. If we had been more prescient about the risks of its later forensic misuse, we would have returned to the much better worded general definition provided by DSM-III, with its explicit statement that the essence of a paraphilia is that "unusual or bizarre imagery or acts are necessary for sexual excitement" and that "such imagery or acts tend to be insistently and involuntarily repetitive" (Ref. 16, p 266). The changes in wording between DSM-III and DSM-III-R (which were retained by us in DSM-IV) were not in any way meant to change the definition of paraphilia. They reflected instead the concern that words like unusual and bizarre, while conceptually clear, were inherently subjective and thus would be difficult to operationalize reliably.

Much confusion in legal settings could have been avoided had the DSM-III wording been retained to clarify the intended definition of paraphilia, even granting that these terms are inherently imprecise.

The underlying problem is that a satisfyingly precise bright-line definition of paraphilia may not be possible, just as there is no satisfying bright-line definition of the more general concept of mental disorder in either psychiatry or the law. This ambiguity has led to the distressing situation of the defining of paraphilia NOS by the idiosyncratic, unreliable, and untrustworthy standard of "you know it when you see it." But one thing is clear about the DSM definitions, however imprecise their wording. Paraphilia is meant to apply only to sexual urges, fantasies, and behaviors that are unusual or bizarre. As we shall see in the second section of this article, attraction to pubescent individuals is far too widespread to be considered unusual or bizarre and has not been considered to be evidence of a paraphilia in any of the DSMs from DSM-I all the way through to DSM-IV-TR. Given the rightful illegality of predatory sexual relationships with minors, being intensely sexually aroused by adolescents may predispose the individual with such inclinations to committing a crime, but the attraction in and of itself is not an indicator of mental disorder.

Definition of Children

It has been claimed in forensic proceedings that the use of the term children as one of the categories of sexual arousal foci in the introduction of the Paraphilias section was meant also to include attraction to pubescent individuals. For example, in its attempt to annotate the DSM-IV introductory section, an influential manual used by forensic evaluators to guide their evaluations of sex offenders states that "the recommendation is made that evaluators' interpretation of the word 'children' specifically for diagnostic purposes include any of the [following]" (Ref. 20, p 61): ". . . 1) anyone under the legal age of consent (e.g., age 15, 16, 17, or 18 depending on jurisdiction); 2) anyone yet to reach puberty (which the DSM-IV operationalizes as 'generally age 13 or younger'); or 3) anyone still under the legal guardianship of an adult" (Ref. 20, p 60). This broadening of the concept of children goes far beyond anything that was intended in DSM-IV. As discussed earlier, the use of the word children in the introductory section was intended to be entirely congruent with its use in the diagnostic criteria set for pedophilia, which state "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors with a prepubescent child or chil-

dren (generally age 13 years or younger)" (Ref. 19, p 572).

Furthermore, the parenthetical phrase (generally 13 years or younger) modifying the word children has been used in some SVP commitment cases to argue that a sexual offense against any 13-year-old would qualify under the diagnosis of pedophilia, regardless of whether the child is pubescent. As is often done in diagnostic criteria sets to assist in their clinical utility, the phrase was included simply for the purpose of providing a general upper age limit for the construct prepubescent, one that made more sense in the late 1980s than it does now with the steady decline in the age of attaining puberty.[21] It is a simple misreading in legal proceedings (and also in the DSM-5 rationale supporting its proposal for pedohebephilia[22]) to imply that attraction to all individuals under age 13 would qualify, regardless of whether they are prepubescent. The diagnosis of pedophilia is based on the absence of puberty, not on any arbitrary age cutoff that could be misinterpreted to include pubescent individuals.

Inclusion of Paraphilia NOS

DSM-IV-TR includes sentences that state, "A residual category, Paraphilia Not Otherwise Specified, includes other Paraphilias that are less frequently encountered" (Ref. 19, p 567). "Examples include, but are not limited to telephone scatologia, necrophilia, partialism, zoophilia, coprophilia, klismaphilia, and urophilia" (Ref. 19, p 576). The possibility of including hebephilia as a specific NOS example never arose during the development of DSM-IV or DSM-IV-TR because no one suggested it. This concern did not arise until SVP evaluators started to assert that paraphilia NOS, hebephilia, was a legitimate basis for meeting the mental abnormality requirement in SVP statutes. The promotion of the concept, paraphilia NOS, hebephilia, is a medicalization of criminality mainly undertaken to plug an unfortunate hole in the legal system.

Appropriate Use of NOS Categories in Clinical and Forensic Settings

Our attempt to set the record straight calls for a more general clarification of the purposes of NOS categories in DSM-IV-TR—why they are included, how they are meant to be used in clinical settings, and why they should not be abused in forensic determinations. DSM-IV-TR provides for 46 NOS categories included in the various sections throughout the manual. These are necessary to allow the diagnosis and coding of patients who do not fit well into any of the specific and official categories, but who nonetheless seem, on the basis of clinical judgment alone, to have a mental disorder with clinically significant distress or impairment. As noted in the Use of the Manual section of DSM-IV-TR (Ref. 19, p 4), NOS diagnoses apply for presentations that are subthreshold, atypical, or of uncertain etiology, or when insufficient information is available to enable a more precise diagnosis. The NOS categories are provided for clinical convenience because psychiatric presentations can be so varied and idiosyncratic and it would be impossibly cumbersome to have specific labels for every conceivable presentation.

While the NOS categories are essential for clinical practice, they are usually inappropriate and misleading when applied to consequential forensic SVP deliberations. Psychiatric diagnoses from the DSM-IV-TR are generally considered admissible in court because they are accepted by the field at large as recognized, clinically valid categories and are able to be reliably assessed. By virtue of their residual and idiosyncratic nature, cases given the label of NOS are by definition outside of what is generally accepted by the field as a reliable and valid psychiatric disorder. Furthermore, because the NOS categories do not have criteria sets, it is unlikely that they can be diagnosed reliably. There is no reason to assume that different evaluators would agree on an NOS diagnosis and therefore no reason to accept the NOS diagnosis offered by any given evaluator.

The introduction of the DSM-IV-TR includes a section entitled, Use of the DSM-IV in Forensic Settings, which discusses the limitations and the potential advantages of using the DSM in a forensic context, when it is used appropriately. For example, it states "when the presence of a mental disorder is the predicator for a subsequent legal determination (e.g. involuntary civil commitment), the use of an established system of diagnosis enhances the value and reliability of the determination" (Ref. 19, p xxxiii). It then goes on to say that "by providing a compendium based on a review of the pertinent clinical and research literature, DSM-IV may facilitate the legal decision makers' understanding of the relevant characteristics of mental disorders" (Ref. 19, p xxxiii). These potential advantages apply only to categories

that represent the distillation of current psychiatric knowledge. Because NOS categories by definition fall outside the realm of the existing established categories, their use in forensic settings is much more likely to lead to inappropriate conclusions about their legal implications.

Thus, the use of an NOS category in a forensic setting should always be seen as extraordinary. If admitted at all as testimony, NOS diagnoses should require the strongest of supportive documentary evidence. They should certainly not be broadly and routinely accepted.

The Misguided DSM-5 Pedohebephilia Proposal

Among several radical proposals made by the DSM-5 Sexual Disorders Workgroup is the backdoor introduction of the hebephilia diagnosis into the DSM-5 by expanding the existing well-accepted pedophilia category to include sexual arousal to pubescent individuals and renaming the broadened construct pedohebephilic disorder. There is no apparent need or compelling rationale to include hebephilia in DSM-5 beyond the research interests of a few scientists and the questionable use of hebephilia in SVP proceedings.

The DSM-5 Workgroup misleadingly minimizes the extent and likely impact of this important change, suggesting that it is simply proposing that the upper age limit of pedophilia be increased one year from age 13 to 14. This claim is based on the fact that the guideline "generally age 13 years or younger" is provided as a parenthetical statement after the phrase "prepubescent children" in the definition of pedophilia in DSM-IV-TR, whereas in the DSM-5 proposal for pedohebephilic disorder, the subtype definition for the optional hebephilic type is given as "sexually attracted to pubescent children (generally age 11 through 14)." In actual fact, the proposed change in the definition is much more significant: from "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children" in DSM-IV-TR (restricted to children at Tanner Stage 1, i.e., children with no evidence whatsoever of the development of primary or secondary sexual characteristics) to "recurrent and intense sexual arousal from prepubescent or pubescent children," thus including children at Tanner Stages 2 and 3 as well (i.e., the first two of four stages of primary and secondary sexual characteristics, such as the development of pubic hair and breasts).

The DSM-5 proposal for folding hebephilia (attraction to pubescent individuals) into pedophilia (attraction to prepubescent children) only makes sense if it can be established that both pedophilia and hebephilia are essentially part of the same underlying condition. Empirical evidence supportive of such a contention would consist of studies demonstrating that across most validators of interest, pedophilia and hebephilia are essentially identical. The recommended guidelines for making changes in the DSM-5[23] stress the importance of demonstrating broad support from several validator classes and particularly from at least one high-priority validator. These high-priority validators include familial aggregation, diagnostic stability, course of illness, and response to treatment. Unfortunately, no studies have been undertaken to compare pedophilia and hebephilia on any of these high-priority validators. Instead, virtually all of the scant empirical data that have compared pedophilia, hebephilia, and so-called teliophilia (i.e., nonparaphilic attraction to adults) have focused on validators of questionable relevance, such as IQ,[24,25] completed education,[24] head injuries before age 13,[26] left-handedness,[24,27] and stature.[28] However, even with these weak validators, the empirical data do not support the contention that pedophilia and hebephilia are part of the same overarching diagnostic construct. Instead, the studies consistently demonstrate that the values for hebephilias are intermediate between those for pedophiles and teliophiles, suggesting their lack of equivalence. Similarly, among gynephilic men (i.e., men preferentially attracted to adult women) presenting for evaluation of problematic sexual behavior, sexual arousal to images of and narratives involving pubescent girls is significantly higher than arousal to prepubescent girls.[29]

Another potential problem with expanding pedophilia to include attraction to pubescent individuals is its likely impact on diagnostic reliability. As part of a study of the reliability of sexually violent predator civil commitment criteria in Florida (which was found to be poor, $\kappa = 0.56$), Levenson[30] examined the reliability of the application of psychiatric diagnoses. She reported that the diagnostic reliability of pedophilia was only fair ($\kappa = 0.65$) and suggested that the most likely sources of unreliability came from the determination of constructs in the criteria such as the 6-month required time period, the use of

terms such as recurrent and intense, and the determination of whether there was impairment or distress. Moving the diagnostic cutoff from prepubescent children (which is likely to be a relatively reliable construct due to its being defined by the complete absence of signs of puberty) to the inherently blurry dividing line between pubescent children and postpubescent children is likely to compromise diagnostic reliability further. For example, in terms of pubic hair, the difference between Tanner Stages 1 and 2 (the current boundary between pedophilia and no paraphilia) is the lack of pubic hair at all versus sparse growth of long, downy hair with slight pigmentation. In contrast, the dividing line between Tanner Stages 3 and 4 (which would be the new boundary between pedohebephilia and no paraphilia) is pubic hair that is coarser, curled, and pigmented and spreads across the pubes versus adult-type pubic hair but with no spread to the medial thigh.[31,32] As Zander[12] so aptly put it, this is "splitting pubic hairs" in a way that will almost certainly compromise its already problematic diagnostic reliability.

The DSM-5 Workgroup has also decided to impose a requirement for a minimum number of victims: two or more offenses if the victims are prepubescent; three or more if one or more of the victims are pubescent. Notably, the only citation provided on the DSM-5 web site for these pseudoprecise cutoffs is a single study of 365 men[33] that in actuality does not offer any support for using a cutoff of three or more victims to balance false positives versus false negatives in the diagnosis of pedophilia. What this study in fact demonstrated was that the sensitivity of penile plethysmography (a fallible laboratory measure of a man's preferred sexual arousal foci) grew as the number of victims increased.[34] As noted by the authors in their discussion of these results, "Our analyses for offenders against unrelated children confirmed the expected result that men with greater numbers of victims had a greater likelihood of being diagnosed as pedophilic" (Ref. 33, p 124). In response to a recent critique of the lack of an empirical footing for the three-victim cutoff, Blanchard[35] performed a reanalysis of phallometric data on men referred for a clinical evaluation, most of whom had one or more sexual offenses against children, adults, or both. According to this analysis, the diagnostic specificity for a three-victim cutoff was 91 percent. The problem, of course, with these kinds of analyses is that the results are dependent on the particular sample studied (i.e., they are valid only for this particular population of men who had been referred to the Centre for Addiction and Mental Health in Toronto from 1995 to 2009). While it is certainly possible, given the large number of subjects and relatively diverse range of referral sources, that these results can be generalized to groups of men referred for paraphilia evaluations in countries other than Canada, the question is an empirical one that would have to be demonstrated. Furthermore, the use of a minimum requirement of three victims may also lead to significant false negatives. An offender could sexually molest one victim daily for years (e.g., a family member or neighbor) and would not qualify for the diagnosis.

Overall, the research evidence supporting the inclusion of a new diagnosis of hebephilia is remarkably sparse and almost completely irrelevant. Most of the few available studies have been performed by a single research group on a sample of convenience (consisting mostly of offenders without a proper control group of nonoffenders) and typically compare individuals with a putative diagnosis of hebephilia with other groups of offenders (e.g., those with attraction to prepubescent or sexually mature victims) on variables that are not at all relevant to the validity, reliability, or clinical utility of the diagnosis of hebephilia (e.g., IQ, height, and handedness). Furthermore, we have no idea how the suggested DSM-5 criteria set would work in practice. Would it be reliable? Could it distinguish offenses arising from a paraphilic arousal pattern from those that are criminal or opportunistic or arise from impulse dyscontrol caused by a more established mental disorder (e.g., substance abuse, mania, mental retardation, or schizophrenia) or from brain injury? How should the evaluator define the fuzzy boundaries between prepubescent, pubescent, and sexually mature victims, all of which are imprecise?

This is a research enterprise that is just beginning and certainly is not ready to deliver a new diagnosis, especially one carrying so much forensic baggage. Finally, because of the limited funding available for the DSM-5 field trials, none of the sexual disorders (including pedohebephilia) will be included among the diagnoses that will be field tested. Including it in the manual without any field testing would be essentially flying blind, with potentially disastrous results.

The problems go far beyond the primitive research base. Suppose all the practical research were com-

pleted and the data were to prove that hebephilia exists as a discrete diagnostic entity and that it could indeed be reliably diagnosed. It still would not qualify as a Paraphilia. The essence of a paraphilia is that the sexual interest is deviant. Several studies have demonstrated the completely obvious, that attraction to pubescent individuals is common and within the range of normality. In a penile plethysmography (PPG) study, Barbaree and Marshall[36] found that a third of their small sample of 22 nonoffending men showed sexual arousal to adolescents as well as adults. In a PPG study of 48 heterosexual men in compulsory military service, Freund and Costell[37] found that the subjects' reactions to nude images of both adolescent (ages 12–16) and adult (ages 17–36) females were similarly high; those to images of female children (ages 4–10) were intermediate; and those to male children, adolescent or adult, were negative. In another study, Quinsey and colleagues[38] compared 20 child molesters against 21 controls (a mixture of non-sex offenders and males from the community), in penile circumference, skin conductance, and rankings of sexual attractiveness in response to photographs of persons of various sexes and ages. Similar to the 1970 Freund study, the normal group's arousal to pubescent females was elevated compared with a neutral stimulus, as well as to female children, and did not differ from the child molester group.

The advertising industry needed no studies to know that attraction to adolescents is common in the general population. The use of provocatively attired adolescent girls to promote products is certainly not uncommon. For instance, the famous (or maybe infamous) Calvin Klein advertisement using a youthful appearing Brooke Shields reflects the conventional wisdom that the general consumer population contains enough adult males attracted to a sexualized adolescent to justify making such a portrayal the center of an advertising campaign. It is fallacious to assert that having sexual urges involving pubescent youngsters is sufficient for a diagnosis of a mental disorder. Having such urges is normal; acting on them is a serious crime, not a mental disorder. The risks of the DSM-5 proposals are magnified because they emerge against the background of a push toward the increased diagnosis of hebephilia in SVP cases.

The DSM-5 Workgroup is suggesting a far-reaching change that can have an impact on individual civil liberties and the misuse of psychiatry in forensic settings. Such a radical and consequential change should require a clearcut need, a compelling rationale, a conceptual justification, extensive empirical validation, and a careful risk-benefit analysis. None of these has been offered for hebephilia, for the simple reason that there is no clear need or rationale for this category, the empirical data are remarkably sparse, and the conceptual foundation that it is a paraphilia is at best questionable. The Workgroup does offer the naïve claim that including hebephilia as an official category might actually reduce the use of the diagnosis in SVP commitments, because it would be made more specifically. The opposite is much more likely to be true. Conferring official status on this unproven diagnosis would legitimize it, contribute to its credibility, and result in greatly expanded use. It is a great and puzzling paradox that the American Psychiatric Association has taken an extremely strong position opposing SVP statutes as a misuse of psychiatry[39] while its DSM-5 Workgroup is suggesting a diagnosis that would provide great impetus to increased SVP involuntary commitment.

Conclusions

Hebephilia is not a legitimate DSM-IV-TR mental disorder, and it should not be included as a DSM-5 mental disorder, for both conceptual and practical reasons. Hebephilia is not a paraphilia, because the sexual arousal pattern that would define it is not inherently deviant. Normal men have fantasies and urges in response to pubescent targets; acting on such attractions is a serious crime, not a mental disorder. Beyond this seemingly conclusive conceptual obstacle, the research support for hebephilia is remarkably undeveloped, weak, and unconvincing. The sudden attention focused on hebephilia as a forensic diagnosis has unfortunately been influenced by its inappropriate and premature use in qualifying SVP defendants for indefinite psychiatric commitment. The alleged diagnosis paraphilia not otherwise specified, hebephilia, arose, not out of psychiatry, but rather to meet a perceived need in the correctional system. This solution represents a misuse of the diagnostic system and of psychiatry. That a large number of forensic mental health workers have been mistrained to regard paraphilia NOS as a valid diagnostic category in SVP proceedings should not be construed as proper representation of the views of the entire mental health field. Similarly, the very preliminary studies conducted by a few research groups should not be construed to indicate that hebephilia

has any solid scientific support. Hebephilia is not an accepted mental disorder that can be reliably diagnosed and should not be treated as such in SVP proceedings.

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Psychiatric Times. Vol. No. July 15, 2011

UBM Medica Psychiatric Times

EXHIBIT "B"

Psychiatric Times.

Should Having Antisocial Personality Qualify A Rapist For SVP Commitment?

By Allen Frances, MD | July 15, 2011

Those of you who have been following the SVP controversy know that "Paraphilia NOS, nonconsent" (PNOS) is a fake diagnosis that is losing traction as justification for committing rapists to psychiatric hospitals. PNOS was based on a fundamental misreading of DSM IV and was an egregious example of inexpert diagnosing that should never have received any credibility as expert testimony. The PNOS fad developed only as a means to expedite SVP proceedings—misusing psychiatric diagnosis and commitment to conveniently park about-to-be-released criminals.

Fortunately, everyone seems finally to be waking up to the fact that rape is a crime, not a mental disorder. The ultimate downfall of "Paraphilia NOS" was sealed recently when DSM 5 rejected "coercive paraphilia" as a diagnosis—the fourth resounding DSM rejection of this fatally flawed concept. Hopefully, before long "Paraphilia NOS, nonconsent" will be totally discredited and disallowed in SVP hearings.

Fortunately, the tide seems to be turning fast. Last week, the California Department of Mental Health (DMH) abruptly reversed its long standing policy of encouraging the diagnosis of Paraphilia NOS. Previously, its state employed evaluators were instructed that a diagnosis of Paraphilia was necessary to qualify for SVP commitment. The Department has now recanted in a new memo giving evaluators just the exact opposite instructions—that diagnoses other than Paraphilia must now be considered in SVP commitments. This sudden about face represents a clear surrender by the DMH, an implicit admission that PNOS is a misguided concept losing its power to fool juries.

The DMH memo applies clear pressure on its evaluators to find a substitute justification for SVP commitment. They will now probably resort to the frequent use of Antisocial Personality Disorder (ASPD) as the new go-to diagnosis. ASPD is already allowed as an SVP qualifying disorder in some states, but (at least until now) it has been considered non-qualifying in California and in many others. This lack of consistency cries out for testing at the appellate level in both the state and the federal courts. The appropriateness of ASPD as an SVP diagnosis touches on fundamental constitutional questions of due process and double jeopardy and should not be settled inconsistently across states or arbitrarily by evaluators or juries not equipped to deal with the complex legal issues that must be resolved. Moreover, policy on something this important should not be arbitrary and subject to the fickle and unexplained fiat of DMH memos.

There are cogent arguments both for and also against ASPD as grounds for SVP commitment. This is a debate with no obvious or easy right answers. Three plausible arguments support accepting ASPD as an SVP statutory mental disorder: 1) Unlike "coercive paraphilia" and "hebephilia," ASPD is not a faked

and ad hoc diagnosis—it is an official category that is included in DSM IV and thus has its sanction as a mental disorder; 2) ASPD can be diagnosed with reasonably good reliability- so that experts are likely to agree sufficiently on its presence or absence; and 3) ASPD is correlated with criminal behavior, including sexual offenses, and may be a predictor of future recidivism (although admittedly a weak one that accounts for only about 10% of the variance in who will and who won't offend again).

In opposition, there are four arguments against considering ASPD to be a qualifying SVP diagnosis: 1) the DSM IV definition of ASPD is mostly a cataloging of criminal behaviors, making ASPD extremely common among sex offenders and not useful in distinguishing between common criminality and mental abnormality- a distinction clearly required by the Supreme Court; 2) Since ASPD doesn't allow an offender to avoid prison, why later should it justify his psychiatric incarceration; it is inconsistent to rule that the ASPD offender had sufficient volitional control to be held responsible for his crimes (resulting in him receiving the prison sentence), while years later ruling that he is now no longer in volitional control (and therefore can be forced involuntarily into a hospital); 3) there are no other circumstances where ASPD is ever grounds for psychiatric commitment (or for any other type psychiatric hospitalization); 4) many ASPD diagnoses in SVP cases are rendered inaccurately because it is often impossible to establish the history of childhood conduct disorder (as required by the DSM definitional criteria) and/or whether the diagnosis of ASPD is still current vs whether, as often happens, the offender has matured, mellowed, or aged out of it.

There are arguments for and against allowing ASPD based on differing interpretations of the words "predisposition" and "volitional" as these appear in the statute. The contrasting points of view cancel out and the debate about what "volition" or "predisposition" mean is essentially meaningless. These words have been routinely included in the SVP statutes without any precise definition; they are impossible to operationalize or assess reliably; and there is no scientific literature to provide any guidance in using them. Each psychologist and each jury member will inevitably be left to make up his own definition of volition, with any one person's guess being just as good as any other's. I think the "volition" portion of the statute is useless- far too vague to give any help at all in deciding whether ASPD should qualify as an SVP diagnosis.

Taking all the above arguments into account, my personal view is that ASPD should not have the status of an SVP diagnosis for two reasons that trump all else: (1) ASPD is far too overlapping with simple criminality; and (2) if ASPD does not excuse someone from getting locked up in prison, it is inconsistent to use it as a convenient excuse to keep someone locked up in hospital once his sentence has been fairly served.

The fact that ASPD is included in DSM IV does not mean that it defines anything beyond a criminal lifestyle. Using ASPD in SVP cases may sometimes serve the cause of public safety, but it compromises the equally important cause of due process.

The status of ASPD in SVP cases is fundamentally a legal (not a psychiatric) issue- one that should be settled by the appellate courts, not on an ad hoc and poorly informed basis, case by case, by ill equipped mental health professionals and juries. Neither psychologists nor juries are remotely qualified to evaluate the proper legal standing of ASPD under the strict conditions imposed by the Supreme Court in rulings that have only narrowly accepted the constitutionality of SVP statutes. The Court explicitly requires that the distinction be made between the mental ill and the simply criminal- SVP psychiatric commitment has been declared constitutional for the former, but would be a violation of the civil rights of the latter.

ASPD straddles this boundary in the most remarkably awkward way. Yes, ASPD has been included as a mental disorder in DSM IV, but it's DSM IV definition is really nothing more than a pattern of sustained

criminality that characterizes the majority of run-of- the-mill rapists. Ultimately only the Supreme Court can resolve this unfortunate and puzzling conundrum that lies at the heart of the application of SVP statutes. We need it to provide the necessary clarification of its previous rulings by explaining whether the law regards ASPD more as a mental disorder or more as simple criminality.

Clearly the decision about ASPD should not be made case by case by a mental health professionals or by a jury. Appellate courts are needed to decide this essentially legal, not psychiatric, issue. I fully realize that getting the question in their hands will not be easy and, once there, judges are unlikely to want to make a clear and specific stand. So we may be stuck with the chaotic current mayhem for some time.

But however difficult the ASPD question, it is a big step forward to be having this discussion since it marks the beginning of the end of the unfortunate and misguided "Paraphilia NOS" fad.

APPENDIX K

SCANNED 2

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WHATCOM COUNTY
WASHINGTON
BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

In re the Detention of:	)	NO. 96 2 01119 0
	)	
ALAN L. MEIRHOFER	)	FINDINGS OF INDIGENCY AND
	)	ORDER TO TRANSMIT FINDINGS
Respondent.	)	OF INDIGENCY - RAP 15.2 (C)
	)	

The court finds that Alan Meirhofer, the Respondent in this action, lacks sufficient funds to seek review in this action. The Court finds, however, that the moving party is able to contribute $0.00. The following portions of the record are reasonably necessary for review:

1. N/A
(Designate are portions of the Clerk's Papers necessary for review.)

2. N/A
(Designate any portion of the verbatim report of proceedings necessary for review.)

3. Reproduction of briefs and other papers on review which are reproduced by the Clerk of the Appellate Court.

4. N/A
(Designate any cumbersome exhibits which need to be transmitted.)

5. Other items N/A
(If the moving party has requested appointed counsel, and the Court finds such to be necessary to a fair presentation of the issues on appeal, designate appointment of counsel here.

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Now, therefore it is ORDERED that the Clerk of the Superior Court shall promptly transmit to the Supreme Court the Motion for Findings of Indigency, the Affidavit of Indigency, and the Findings of Indigency.

Dated this 14th day of November, 2011

Superior Court ~~Judge Mura~~ Commissioner

Presented by:
The Law Office of Seth M. Fleetwood

Seth M. Fleetwood
Attorney for Respondent
W.S.B.A. #22786

SCANNED 2

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WHATCOM COUNTY
WASHINGTON
BY _____

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

In Re the Detention of : Alan Meirhofer, Respondent.	No. 96 2 01119 0 ORDER FINDING RESPONDENT, ALAN MEIRHOFER, INDIGENT FOR PURPOSES OF APPEALING HIS 2011 SHOW CAUSE HEARING ON ANNUAL REVIEW

THIS COURT having considered the Respondent's motion to find indigency and previously having entered findings of indigency and ordered transmission of findings of indigency for Respondent, Alan Meirhofer, it is hereby:

ORDERED, ADJUDGED AND DECREED that Respondent's motion for indigency is hereby granted.

DATED THIS 2 day of February, 2012.

JUDGE MURA

Seth Fleetwood WSBA #22786
1101 Harris Ave., Suite 24
Bellingham, WA 98225
(360) 671-3299

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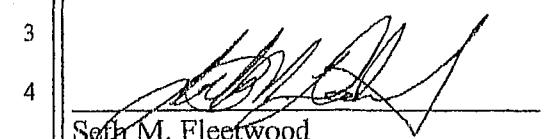
Presented by:
The Law Office of Seth M. Fleetwood



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